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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Organization

Second Session, 34th Parliament

Monday 16 October 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
Editor of Debates: Peter Brannan

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 16 October 1989

The committee met at 1544 in room 228.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman. Are there any nominations?

Mr Kanter: I nominate Bob Chiarelli as chairman of this committee.

Mr Sterling: I nominate Peter Kormos just to show the independence of the committee–

Mr Kanter: Not to mention your own bipartisan nature.

Mr Sterling: The Premier (Mr Peterson) having named all of the chairmen before the committee had its opportunity to elect the chairman, I think it is important that we have a runoff this time.

Mr Kormos: In any event, Mr Clerk, I stand.

Clerk of the Committee: All those in favour of the nomination of Mr Chiarelli? All those opposed? I declare Mr Chiarelli duly elected chair of the committee.

Mr Kormos: On a point of order: If that is how the election is run, it is conceivable that there is another candidate for chairman.

Miss Nicholas: If you had voted for him, we might have considered an alternative vote.

The Chair: Thank you, lady and gentlemen. The next order of business is–

Mr Sterling: Mr Chairman, I would just like to say that we will give you our unanimous support. The nomination of Mr Kormos was not for the purpose of doubting your ability but for the purpose of maintaining the independence of the committees from pronouncements of the Premier.

Mr Kanter: Geography will transcend political parties in this committee, it seems.

Miss Nicholas: No, no. They thought Mr Kormos would be better.

Mr Kormos: So did I, quite frankly.

The Chair: I am sure that if Mr Kormos thought that there was a realistic prospect that he would be elected he would have declined because he would have otherwise been quiet and subdued and impartial and not been able to express much opinion on the matters at hand–

Mr Kormos: It would happen in any event, Mr Chair; what difference would that make?

The Chair: The next order of business is the election of a vice-chair. Are there any nominations?

Mr Kanter: I nominate Mr Polsinelli.

The Chair: Are there any other nominations?

Mr Kormos: I nominate Mr Sterling.

Mr Polsinelli: I second Mr Sterling.

The Chair: No seconder is required.

All those in favour of Mr Polsinelli? All those opposed? The election of Mr Polsinelli as vice-chair is hereby declared.

Mr Polsinelli: This is such a tremendous pleasure.

The Chair: The third item of business on today's agenda is the possible motion for the subcommittee on the committee's business to be struck. Is there anyone who is unfamiliar with the provisions of the standing orders on the election of the subcommittee on business?

Mr D. W. Smith: Could you go through it, Mr Chair? This is the first time I have sat on this committee.

The Chair: Yes, it is section 122, which reads as follows:

"Following the election of a chair and vice-chair at its first meeting in each session, a standing committee shall appoint a subcommittee on committee business, consisting of the chair of the standing committee as chair and one member from each of the recognized parties on the committee, to meet from time to time at the call of the chair or at the request of any member thereof and to report to the committee on the business of the committee."

Is everyone clear on that?

Mr D. W. Smith: Thank you.

Miss Nicholas: Should I move it?

The Chair: First of all, we have to determine whether or not the respective parties have determined who their nominees will be and that there is one nominee from each party.

Might I ask the representatives from each of the parties whether they have a name to either nominate or appoint as a representative on this particular committee?

Mr Kormos: Yes, my own.

The Chair: Your own. Mr Sterling on behalf of the Progressive Conservative Party, and Mr Kanter on behalf of the Liberal Party.

Can we have a motion to that effect, please?

The Chair: Miss Nicholas moves that the chair, Bob Chiarelli, and Mr Kormos, Mr Sterling and Mr Kanter comprise the subcommittee on committee business; that the said subcommittee meet from time to time at the call of the chair to consider and report to the committee on the business of the committee; that substitution be permitted on the business subcommittee, and that the presence of all members of the subcommittee is necessary to constitute a meeting.

Motion agreed to.

The Chair: Unless there are any other comments from any of the members of the committee, I would suggest that the committee consider adjourning to permit the subcommittee on committee business to discuss the order of business for the committee and to report back to the committee at the call of the chair.

Miss Nicholas: I think that is a great idea, but is it anticipated that this committee will meet tomorrow?

The Chair: I would hope that perhaps we could meet today when we adjourn.

Mr Kanter: You mean the subcommittee would meet today.

The Chair: The subcommittee, yes.

Miss Nicholas: But the committee as a whole, would it be meeting in its prescribed time allotment, which I gather is tomorrow after normal proceedings?

The Chair: I really cannot say. I think that we will have to report back to you. I do not anticipate that we will be meeting tomorrow, but I do not want to prejudge the determination of the subcommittee. The committee is adjourned until the call of the chair.

The committee adjourned at 1552.

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Sterling, Norman W. (Carleton PC)
Clerk: Arnott, Douglas
Staff:
Swift, Susan, Research Officer, Legislative Research Service

Ontario

No. J-2

Hansard
Official Report of Debates
Legislative Assembly of Ontario

Standing Committee on Administration of Justice
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Second Session, 34th Parliament
Tuesday 24 October 1989

Speaker: Honourable Hugh A. Edighoffer
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 24 October 1989

The committee met at 1536 in room 228.

ORGANIZATION

The Chair: We appear to have a quorum. Item 1 on the agenda is a review of revisions to standing orders as they pertain to committees. As all of you, I am sure, are aware, there are a number of changes in the standing orders, and particular changes will affect how we do business in committees. I thought it would be reasonable at this time for the clerk to give us a brief overview of how those changes will affect us in our deliberations, so I will ask the clerk to go ahead and proceed.

Mr Kormos: I am sorry, Mr Chairman. I am wondering if we might reverse the order of items on the agenda, because I understand it is a simple matter of ratifying the agenda for the committee that is proposed in the subcommittee's report.

The Chair: There is a proposal to reverse the order of the agenda. Is there any objection to that? If there is no objection, then we will go ahead and proceed.

Mr Kormos: Thank you.

The Chair: We will go to item 2, the report of the subcommittee on committee business, which has been prepared, I believe, accurately as a result of the meeting which was held by the subcommittee.

Mr Kanter: Mr Chairman, I wanted to say at the earliest possible opportunity that I thought Mr Kormos had a good idea and I wanted to put on the record the fact that I was agreeing with his idea on this one occasion.

Mr Kormos: Is that with respect to our proposal that there be public hearings across the province on the auto insurance legislation?

Mr Kanter: Only with respect to your proposal. Now there you are, Mr Chairman. He is just about to lose my general commendation.

The Chair: I am sure the compliment is accepted in the spirit in which it was given.

Mr Kanter: I hope so.

Mr Kormos: Or is Mr Kanter endorsing the proposal made by Mr Sterling yesterday in the Legislature?

Mr Sterling: Yes, Peter Kormos, QC.

Mr Kormos: That brought chuckles from all sorts of people.

The Chair: If we can address our minds to the committee report, I assume that all the members of the committee have read it. Rather than going through it item by item, is there any particular issue in the report which any member wants to raise? If there is not, then maybe we can just have a motion for adoption. Is there any particular item in the report which a member wishes to raise?

Mr Polsinelli: It is incumbent on me to bring to the attention of the committee that the committee does have before it Bill 149, and I would ask the committee that at some point consideration be given to dealing with that particular bill also.

The Chair: Would it be satisfactory if that matter were referred to the subcommittee on committee business for its consideration?

Mr Polsinelli: I am just bringing it to the attention of the committee because it does not appear in the order of business as reported by the subcommittee, not to say that I disagree with the order of business that has been put by the subcommittee.

The Chair: It does not necessarily have to be included in the report–

Mr Polsinelli: No, not at this point.

The Chair: –although it could be. Would you think it is reasonable to refer that to the subcommittee on committee business?

Mr Polsinelli: Perhaps I could speak to the subcommittee members individually on that matter.

Mr Kanter: I have a question about item 4. I hear, from time to time, Mr Scott introducing new things into the Legislature. Should we have other matters for the consideration of this committee, say, before 21 November, would we then consider those government bills in priority to the inquiry on alternative dispute settlement mechanisms? Would that be understood? What would occur if we get other government bills?

The Chair: I think that item 4 would be something that would be ongoing and that particular issue would be recessed while we would be dealing with any necessary govern-

ment bills. This would be quite an ongoing process.

Mr Kanter: It might start and perhaps be interrupted from time to time by government bills?

The Chair: Exactly.

Mr Kanter: It would be a long-term sort of project.

The Chair: I see no reason why item 4 would have to be dealt with consecutively without interruption.

Mr Kanter: With that explanation I have no difficulty and would endorse the proposal of the subcommittee.

The Chair: If there are no other comments, can we have a motion to adopt the committee report? Do you have a question, Mr Kormos?

Mr Kormos: No, I should wait for the motion.

The Chair: Okay. Is there a motion to adopt the committee report? Moved by Mr Kanter. Any discussion on the motion?

Mr Kormos: Just speaking to item 4, I guess I want to make it perfectly clear that now I am agreeing with that, knowing that we can spend a whole lot of time expanding on that and amending it to make sure it is open-ended, but rather than do that, I just want to express my point of view that as far as I am concerned, when we are adopting this, item 4 is broad, open-ended and not, at some point down the road, going to be subjected to some strict interpretation so as to exclude a particular avenue of inquiry or investigation.

I am being cynical, but I am thinking about the prospect of stumbling across something that, all of a sudden, may be a less-than-pleasant exercise for some of the members of the committee, and then they would say: "Oh no, that's not what item 4 says. Item 4 has to be interpreted in its stricter sense." What I am asking this committee to do when it ratifies this agenda is to agree, in the course of ratifying it, that item 4 is, on the contrary, to be interpreted now and for ever in the most–I almost said "in the most liberal sense." But from a lawyerly point of view, I guess that is what I mean.

The Chair: Are you suggesting that the committee itself not have the authority to determine the limits and scope? For example, this particular item, item 4, has no time period, has no budget, does not focus or prioritize any particular items. I believe that should be within the scope of the committee to decide as we move along. Basically, we have here, I think, a statement of principle as to the subject matter we want to explore and report back to the House on, but I do not think we can prejudge such things as budget, such as the extent of outside research that will be conducted, etc. In terms of the items that would be included in a debate, I do not think we anticipate restricting this item 4.

Mr Kormos: Thank you, Mr Chairman.

The Chair: Any further comments?

Mr Kanter: I think the chairman expressed my views well.

Miss Nicholas: Peter agreed with that.

Mr Kormos: No, I just said, "Thank you." I was merely being polite.

The Chair: That is pretty good.

Mr Kormos: That is a start.

The Chair: There is a motion on the floor. Is there any other discussion? We will put the question.

All in favour of the committee report?

Any opposed?

Motion agreed to.

The Chair: Now there is one ancillary item that flows out of the approval of the committee report. That has to do with the issue of the notice of hearings for the freedom-of-information legislation, that is, Bill 49 and Bill 52. The clerk has anticipated the need for determining the notice and has draft notices available for us, one general notice and one that would be going specifically to municipalities and certain boards and commissions. We certainly would like some feedback from committee members as to the content of those notices, but we will take a minute or two and just read them over and then we will discuss them.

Miss Nicholas: Are these for advertising or merely for mailing?

The Chair: For mailing.

Miss Nicholas: Okay.

Mr Kormos: I have really have to go, but I would ask that the Chair deem me not to have gone so that the committee can carry on.

The Chair: Okay.

Mr Kanter: Do you mean we have to do without your verbiage, Mr Kormos? This is indeed an interesting–

Mr Kormos: Just as a courtesy. Thanks.

The Chair: We will continue with our deliberations, Mr Kormos.

Mr Kormos: I bet you will.

Mr Sterling: About that QC for Kormos, I did not really mean it. Oh sorry, Peter, I thought you had gone.

The Chair: I would ask the clerk if he has any comments to make on the notices, just generally, by way of introductory remarks. A simple "no" would suffice.

Clerk of the Committee: I believe not.

Mr D. W. Smith: Is every municipality that is mentioned in this act going to be notified of these hearings?

The Chair: Yes.

Mr D. W. Smith: Or is it just going to be by a public notice in a certain number of papers and that is it?

Clerk of the Committee: The adoption of the subcommittee's report now expresses the committee's wish that notice go to all municipalities, the clerks or clerk-treasurers, police commissions and heads of boards of health. That notice will go out as soon as possible.

The Chair: We will be doing direct mail to those named groups.

Mr D. W. Smith: Anybody who is named on this part of the bill, clause 2(1)(b), every one of those, will be notified.

Clerk of the Committee: Directly or indirectly, yes. The municipalities, the police commissions and the boards of health will be notified directly. The notice to the municipalities will request that municipalities advise, as it states in the fourth paragraph, "all agencies, boards, commissions, corporations or other bodies within their jurisdictions that are covered by the proposed legislation of the committee's notice of hearings."

The Chair: Okay.

Mr Sterling: There are a couple that are not. For instance, library boards will not directly get a note from us, but we would hope that the municipalities would let them know. It is just a matter of trying to get those addresses and all that kind of thing and do it. We were aware that police commissions were concerned about it because of the sensitivity of the health information that the medical officers of health have. I insisted that they be directly notified, and hopefully each municipality will carry through in some fashion.

The only thing I wonder about is, are we mailing to the regions and the counties? Does this cover county government?

Mr D. W. Smith: It says "municipal corporation," so counties should be involved, should they not?

Mr Kanter: I do not know. It clearly would not include all cities, towns and regions under the Municipal Act.

Mr Sterling: It does not read that way, but it should.

Mr Kanter: Off hand, I am not sure it includes counties.

Mr Sterling: There is no question that a county administration should be included.

1550

Mr Kanter: Are they included under the definition of–

Mr Sterling: It does not look like it. That is what I say, Ron. I think that it is either a municipal corporation or it should be included. It may be left out in error.

Mr D. W. Smith: There are 26 counties.

Mr Sterling: Yes. They have more direct contact with some of the agencies.

Mr Kanter: I just do not know whether the intention of the act is to cover counties or not.

The Chair: Susan, do you have a copy of the act?

Ms Swift: No, I do not. I think the clerk does.

Mr D. W. Smith: In Lambton the library board is under the county.

Mr Sterling: Yes, that is what I am talking about.

Mr D. W. Smith: That is why I thought a municipal corporation possibly included a county, but maybe it does not.

Mr Sterling: It is Murray Elston's bill, is it? I cannot imagine his not wanting to include them.

The Chair: Police villages are included, "a municipal corporation, including a metropolitan, district or regional municipality," and then it says, "or the county of Oxford."

Mr D. W. Smith: Oxford is a restructured county; it is a little different from a county.

The Chair: I would assume that all counties are incorporated bodies, are corporations, and therefore would be municipal corporations.

Mr Sterling: I do not think they are municipal corporations.

Mr D. W. Smith: I would like to move that the counties be notified.

The Chair: Okay, why do we not do that? Second, we can ask the researcher to confirm to us whether or not counties are intended to be included in the definition of "institution" in the definitions section. We would want to know, from a policy point of view, whether they are included, and if they are not, why they are not included. That may be an area for possible amendment.

Mr Sterling: If they are included and the reading of the language is such, then in a letter to the counties we should say, "The minister believes you are included under a municipal corporation," for instance. You should make that clear to them so that they do not have the same impression we had.

The Chair: We should have something in the order of a footnote to the notice indicating that county governments are contemplated as being included or not being included, subject to the advice we get from the ministry.

Mr Sterling: Yes.

Mr D. W. Smith: You see, Lambton is now named by the Sarnia-Lambton Act, 1989–I think it is Bill 35–so we have become something like Oxford. To me, they should be mentioned separately–

Mr Sterling: Maybe you do not want to be on record saying that.

Mr D. W. Smith: –not that I totally agreed with what happened, but that is life.

Mr Kanter: My only concern would be how long it might take to get a definitive interpretation from the minister–whoever; Mr Elston–who might want to check with Municipal Affairs or someone else. That is my only concern.

The Chair: I would think that they could give us what the intention is instantaneously. Then we may have some question as to whether it is properly defined or not. That could be a matter of amendment.

Mr Kanter: You are an optimist, Mr Chairman; I hope you are correct.

Mr D. W. Smith: I will still leave the motion there that the counties should be notified while you are figuring out whether they should or should not be included.

The Chair: All those in favour of the motion to notify counties? All those opposed?

Motion agreed to.

The Chair: Before we get into the question of reviewing the standing orders as they pertain to committees, because I suspect that perhaps one or two of the members may want to leave, we may want to order our business for the next short period.

In view of the fact that we have agreed, in terms of legislation, to deal with Bill 49 and Bill 52 on 6 and 7 November, we have a certain number of days between now and then. I am looking for some direction from the committee. I wonder whether the subcommittee on committee business ought not to meet to consider item 4 and how we might get that matter under way, or alternatively we may just schedule a committee meeting and the committee as a whole would deal with the issue of item 4 and how we will get that matter under way. Is there any comment from any members?

Mr Sterling: Is there any–

The Chair: I am thinking of possibly next Monday and Tuesday.

Mr Sterling: Is there any obvious person in the Ministry of the Attorney General to talk about it?

Ms Swift: I do not know. I could find that out and let you know, as with this question on definition, but I do not know offhand.

Mr Sterling: As far as I am concerned, if there were such a person, I would be quite willing to go ahead with the meeting whenever that person could be available.

The Chair: A subcommittee or a committee meeting?

Mr Sterling: A committee meeting. If this is going to be a long-term project, then I think we should start to think about it, and if there is an obvious choice within one of the ministries to deal with it–

The Chair: On the other hand, what we possibly could do is have the subcommittee meet and set out an order of business and the first item may include setting up briefing from that type of individual or person.

Mr Sterling: I do not think a subcommittee meeting is necessary in order to do that.

The Chair: Okay.

Mr Sterling: I am quite willing to defer to you as chairman. If you and Ms Swift and the clerk have got some positive things together, you can come across the House and ask me and that will be satisfactory, if you want to call that–

The Chair: There has been a good summary provided by the researcher.

Mr Sterling: I have not had a chance to read it.

The Chair: It sort of summarizes, I think in a very concise way, what the issues are. I would like at this time to ask Mr Sterling and any other members what type of briefing you might anticipate from such a ministry official.

Mr Sterling: I guess what I was trying to get in shape was somebody who had a pretty good general knowledge of the area to try to get my mind around the kind of structure we would set up over an extended period of time. Do you do things legislatively? What are the various people

who are involved in this kind of business doing at this time? I do not know where the options are at this juncture.

The Chair: Would you want that as a bit of an overview in anticipation of the committee or the subcommittee getting together and setting an agenda for this particular item? I am thinking in terms of budget: research budget, the possibility of travel and so on.

Mr Sterling: I guess what I am saying is that I would like this recommendation 4 given to somebody who has had experience in the area. Maybe it is a professor from law school at the University of Toronto, I do not know, but I know that with every subject, as you go through it, you gain a certain maturity and a certain overview of the whole thing. I would like to hear one or two people talk sort of in those terms so that I can start putting in my own mind the kinds of goals we should be shooting for.

Mr Polsinelli: I think I know where Mr Sterling is coming from, and perhaps what I can do is take this back to the Ministry of the Attorney General and, through yourself, Mr Chairman, and the research officer or the clerk, determine whether or not it is appropriate for one of our officials to appear before the committee through normal process to discuss the issue.

The Chair: In effect, we will wait for that dialogue to take place, and in anticipation we will expect to have a committee meeting possibly on Monday or Tuesday of next week.

Mr Polsinelli: Right.

The Chair: Probably Tuesday would be an appropriate target date.

Mr Polsinelli: Yes.

The Chair: Is that agreed?

Mr Sterling: Sure.

The Chair: I think that finishes our second item on the agenda, which we dealt with first, and I think we are ready to go into the first item on the agenda, which we are going to deal with last. I will go back to the clerk and ask him to give us a brief overview of some of the rule changes, some of the standing orders changes.

1600

Clerk of the Committee: I have distributed to members' places two pieces of paper. One is a photocopy of four important changes to the standing orders and the second paper is called "Designation of Matters to be Considered by Standing Committees," which is a set of interpretative guidelines issued by the committees branch in October of this year, interpreting especially the changes relating to private members' business coming before this sort of committee.

Basically, my presentation will amount to a quick reading of the standing orders and comments on them. The first on the list is standing order 106, which extends the powers of the policy field committees–the standing committee on administration of justice, the standing committee on resources development, the standing committee on general government and the standing committee on social development–and allows them to go into matters "to study and report on all matters relating to the mandate, management, organization or operation of the ministries and offices which are assigned to them from time to time, as well as the agencies, boards and commissions" falling under those.

It also sets out the mechanism by which ministries or offices are assigned to this committee, and if you go to the sheets entitled "Designation of Matters to be Considered by Standing Committees," you will find in appendix I at the back the listing of exactly which ministries or offices fall under the respective policy field committees.

The next standing order on the list, 118, is quite a change to the committee system of the Ontario Legislature in that it removes the right of appeal of a chairman's ruling within committee. It changes this to be "an appeal by the majority of the members of the committee to the Speaker" of the House and sets out the mechanism by which this is done, depending on whether the House is in session or not.

The Chair: I am sorry; I am a couple of steps behind you. Just going back to the first item you raised, the question of ministries which are assigned to various committees and the schedule you referred to, the schedule indicates, "Standing committee on administration of justice: Ministry of the Attorney General, Ministry of Consumer and Commercial Relations, Ministry of Correctional Services, Ministry of the Solicitor General."

How was that assignment effected and when was it effected? We had discussed that informally earlier and we were under the impression that there was no formal assignment of ministries to this particular committee. I would just like to get confirmation as to whether there is a formal assignment of those ministries to our committee or not. How did that take place?

Clerk of the Committee: My understanding is that there is. I do not know the date, but I will check on that and get back to you.

The Chair: Could we have tabled some kind of authority on where that flows from? It is really the underpinning of a good part of the possible agenda for this committee.

Clerk of the Committee: Sure.

Mr Sterling: It came from the negotiations dealing with the standing orders, so it came into effect on 10 October.

The Chair: Is this assignment part of the standing orders?

Mr Sterling: Yes.

The Chair: I read the standing orders and did not see it in there.

Clerk of the Committee: Standing order 106(b) states, "The standing committee on the Legislative Assembly shall prescribe the ministries and offices assigned to the standing committees," and therefore it is that report that the chairman is seeking; that the standing committee on the Legislative Assembly has dealt with the matter.

Mr Sterling: Before that time, there was never–

Clerk of the Committee: No. As I was mentioning on the appeal of the chair's ruling, that can be done only by a majority of the committee and only to the Speaker of the House, and there are procedures set out in standing order 118 as to how that is done, when the report of the chair is made to the House and what must be contained in that report. It states quite clearly that the report must contain a precise statement of the chair's ruling, the issues raised in the committee and arguments by various members of the committee and the decision made by the chair, and also sets out the mechanism by which the Speaker of the House communicates his decision on the appeal back to a committee.

Standing order 122 establishes formally the requirement that every committee have a subcommittee on committee business and sets out the composition. That subcommittee is especially important for the very new procedures set out under standing order 123 dealing with the designation of matters to be considered in committee, which will flow from each party. As it says at the beginning, in each calendar year each member of the subcommittee, aside from the chair, is entitled to designate, "matters to be considered by the committee relating to the mandate, management, organization or operation of a ministry, office or agency, board or commission assigned to the committee," again going back to the list prescribed under standing order 106.

The subcommittee's decision on which items is a report deemed to be adopted by the whole committee. As the interpretative guidelines issued by the committees branch set out on page 2, the report from the subcommittee must include "(i) a precise statement of the matter to be considered; (ii) the time to be allocated for consideration of the matter; (iii) the date on which consideration of the matter is to commence; and (iv) the names of any witnesses to be invited to appear before the committee."

It is the right, under the standing orders, of the member of the subcommittee making the designation to stipulate those first two items, the statement of the matter to be considered and the time to be allocated, and the latter matters, the date for consideration to commence and the names of the possible witnesses to be invited, are decisions to be made by the subcommittee.

Are there any questions or any areas of that procedure I should elaborate on?

Mr Polsinelli: I am having trouble reading section 123, but it seems to me that, as I read 123(a), it seems to say "each member" rather than "each member of the subcommittee". Am I misinterpreting that?

Clerk of the Committee: I believe so. It says, "Each member, other than the chair, of a subcommittee on committee business"–

Mr Polsinelli: –"shall be entitled."

Clerk of the Committee: –"shall be entitled."

Mr Polsinelli: So if it is each member other than the chair of a subcommittee–

Clerk of the Committee: Yes.

Mr Polsinelli: –each member of the committee is entitled to do that.

Clerk of the Committee: No, each member of a subcommittee.

Mr Polsinelli: If that is what the intent was, that is what the clause shall be interpreted as being.

The Chair: That is 12 hours for each member, so are we talking 36 hours?

Clerk of the Committee: Yes. The chair raises one point I should have gone into, which is the maximum time allocation provided for each item suggested by a member of the subcommittee. The consideration can be for up to a total of 12 hours for that matter, and that matter cannot be considered to be a bill, it must be a subject matter.

1610

Mr Kanter: I have one question. It deals with the subcommittee referred to on the last page of

the commentary that has been prepared by the Clerk's office. It says, "Standing Order 123(e) provides that the committee shall appoint a subcommittee consisting of the vice-chair of the standing committee as chair and one member from each of the recognized parties on the committee to hold meetings to receive evidence and to report to the standing committee on the evidence received."

As I understand it, that is only under exceptional circumstances where we have a lot of government public bills and people want to discuss other things. But I take it that committee is separate, apart, distinct from the subcommittee on committee business. Is that a correct understanding?

Clerk of the Committee: Yes.

Mr Kanter: Okay. I just wanted to clarify that. I know the chairman is different. I presume the members could also be different, or I suppose presumably they could be the same in some cases, but it is notionally a separate subcommittee.

Clerk of the Committee: Yes, it is. And in that sense, I would guess, time-limited. It would exist only for the duration of the committee's consideration of that item and for no other purpose.

Mr Kanter: Okay.

The Chair: This is a sub-subcommittee. Does this new sub-subcommittee established report back to the subcommittee on committee business or does it report directly back to the committee?

Clerk of the Committee: No. Standing order 123(e) sets out the possibility of having such a subcommittee to receive evidence and concludes by saying, "and to report thereon to the standing committee." So this is a subcommittee of the full committee, appointed by the full committee and to report back to the committee.

The Chair: Any other comments on that particular portion of the rules, the standing orders?

Mr Polsinelli: Can we move on to other business? We could handle a couple of bills that we have before us.

The Chair: I have a procedural question to raise. On item 4 of the subcommittee report, the one dealing with the alternative dispute-settling mechanism, we presented that on the basis that we would go back to the three House leaders and get authority from the House.

I raise the question as to whether or not that is necessary and/or advisable, because looking at standing order 106(a), where it says that the committees "be authorized to study and report on all matters relating to the mandate, management, organization or operation of the ministries and offices which are assigned to them from time to time, as well as the agencies, boards and commissions reporting to such ministries and offices," I assume that given the fact that the Ministry of the Attorney General is included as one of the assigned ministries, that is a matter which is within the mandate of that ministry. Therefore we do not have to go back to the House for approval, assuming there is a proper designation of that ministry to this committee. Am I correct in that?

Clerk of the Committee: That would certainly be my reading of the committee's powers under standing order 106, yes.

Mr Polsinelli: Much of that would depend on whether you take a liberal or conservative interpretation of that particular standing order.

The Chair: Or rational, and rational is not always equivalent to liberal or conservative.

Mr Polsinelli: That is the second party.

The Chair: Is there any other business that any member or the clerk or the researcher wishes to raise? No? In which case, we will adjourn for today.

The committee adjourned at 1616.

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Tuesday 24 October 1989

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Ontario

No. J-3

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Official Report of Debates
Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Municipal Freedom of Information and Protection of Privacy Act, 1989
Loi de 1989 sur l'accès à l'information et la protection de la vie privée

Municipal Freedom of Information Statute Law Amendment Act, 1989

Second Session, 34th Parliament
Monday 6 November 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 6 November 1989

The committee met at 1536 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION ET LA PROTECTION DE LA VIE PRIVÉE

MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989

Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Chair: I would like to call the standing committee on administration of justice to order. As you are aware, today we are considering Bill 49 and Bill 52 and we are going to have an overview from the minister. However, I just want to go over a matter of arranging some dates for future hearings. We originally scheduled for 6 and 7 November, today and tomorrow, and 14 November. We have had a number of people request extensions or dates further on down the road. In addition to that, both the chairman and vice-chairman of the committee will be out of the country on 14 November. So tentatively, we are looking at two additional dates, being 27 and 28 November and cancelling 14 November.

By doing that, we are accommodating two major groups that want to make submissions–that is, the city of Toronto and the Association of Municipal Clerks and Treasurers of Ontario–and also you will be accommodating the chairman and the vice-chairman who will be out of the country on 14 November. Is there any objection on the part of the committee to meeting today and tomorrow–that is, 6 and 7 November–and then the next hearings would be 27 and 28 November rather than 14 November?

Mr Kormos: Gosh, after reading the letter from the Association of Municipal Clerks and Treasurers of Ontario, I probably would have sought that, so I have no quarrel with it. Is this a seminar or a convention that takes you and the vice-chairman–

The Chair: Trade delegation.

Mr Kormos: Where, Mr Chairman?

The Chair: Well, with the leader of your party, I understand, and the leader of the third party we will be going to Italy on a trade delegation.

Mr Kormos: Both the chairman and vice-chairman of the justice committee are accompanying who, their minister?

The Chair: The Premier (Mr Peterson).

Mr Kormos: Holy zonkers. The Premier gets to take more people than the Leader of the Opposition (Mr B Rae). I am sorry. But in any event, that is a whole lot of people to send to Italy on the taxpayers' tab. But fair enough, yes, I am certainly in agreement now.

Hon Mr Elston: I think we should start cutting back on those people from that other party who are accompanying him.

Mr Kormos: I am quite prepared to pay my own way. But listen, Mr Chairman, what are we doing about readvising–and I appreciate that this is problematic–those other municipalities, because in my mind I am saying maybe there is a whole bunch of municipalities that said, "No way are we going to have submissions prepared for 14 November so we will just toss this notice aside." Now we are going to accommodate people on the 27 and 28 November, do we not have to readvise or advise all those same adressees that we dealt with before of our new dates?

The Chair: The clerk has been quarterbacking that particular issue and he has matters well in hand. I will ask him to make a comment.

Clerk of the Committee: Certainly. To any inquiries that have been coming in to the committee, I have been advising that the committee would today be considering adding two days, as recommended by the chairman. In addition the association of municipal clerks and treasurers is indicating to any inquiries that it has had that there was a possibility the committee would be adding dates. I guess the only thing I would add is that the letter of notice to all

municipalities did say additional dates may be added as warranted by public response.

The Chair: The only two responses for 14 November, as I understand it, have requested an extension to the later dates. So is there agreement on setting the dates as suggested? There are no disagreements.

With that, we will ask the minister, the Chairman of Management Board of Cabinet, the Honourable Murray Elston, to give a legislative overview of Bill 49 and Bill 52.

Mr Kormos, do you have a point of order?

Mr Kormos: Yes please, something tantamount to that, Mr Chairman. The minister kindly indicated that he would make himself available after we have heard from those persons wishing to comment on the legislation. Obviously that is important, because those people may well be raising things that we will want to check with the minister, and I am simply suggesting that be confirmed by the chair, that if indeed he is sought, that will be made possible, that he is going to appear back before this committee after we hear from all those people critiquing or commenting on the legislation.

The Chair: I am not in a position to confirm that personally, but I will ask the minister to comment on it.

Hon Mr Elston: I am certainly going to make myself available to the committee. It is only fair to process this legislation as quickly and as thoroughly as possible. So barring any sort of surprise dates for meetings that cannot be accommodated, I am going to be here.

Mr Kormos: Thank you.

MANAGEMENT BOARD OF CABINET

Hon Mr Elston: I am not going to say very much in my opening remarks. I think that we will have ample time to go through a technical review of the legislation with Frank White and his assistant, Miss Platt. I think that what we can do is probably best get on with the business of the day. I just want to make one comment.

I noticed a copy of a letter dated 2 November from the City of Windsor addressed to, "Chairperson, Management Board Secretariat, Freedom of Information and Privacy Branch, 18th floor, 56 Wellesley Street West," and all this sort of stuff, signed by the deputy city clerk, that says, "Please be advised that city council is in opposition to the implementation of Bill 49, as there is no proven need for such legislation."

I just want to put clearly on the record that the government is moving to implement this legislation in line with the discussions that have been held previously in other committees in this Legislative Assembly, which indicated quite clearly that there was a need for this legislation. The bills which are in front of us today are recognition by this Legislative Assembly that the line taken by the city of Windsor was not reflective of the need as shown throughout the municipal world.

This legislation we are talking about today deals with all the municipalities and various boards, over 300, I guess, of them, and it is a desire of ours to open up the process by which people can get information from boards and municipalities right around the province. We are past the stage of debating, it seems to me, the issue of whether or not the legislation is needed.

In my remarks, I want to first of all thank the Association of Municipalities of Ontario and also the Association of Municipal Clerks and Treasurers of Ontario, those two organizations in particular, and also the previous Minister of Municipal Affairs, John Eakins, for their excellent assistance in bringing together the discussions around which we formed our judgements and opinions with respect to the information. As well, when we have sought advice about the practical limitations on implementation and otherwise, we have found the assistance of Sidney Linden to be quite instructive. In fact, we extend a thank you not only to the commission but also the entire staff at that office.

I would like to say that originally the contemplation of the Legislature was that there would be one act which would house or enshrine all of the freedom-of-information legislation dealing with every body and municipality and otherwise in the province of Ontario. We found, during discussions with the various municipal organizations in particular, that this possibility was not rational and that there were certain questions of implementation that precluded us from using one piece of legislation. As a result, we opted for a second piece of legislation which, in terms of the instructions that the Legislature provided for us originally when the Freedom of Information and Protection of Privacy Act was first passed, would be a bit of a violation of the instructions, I guess.

However, we think it is important that this legislation be fully and practically implementable and we felt there was a great deal of support in the municipal area and among the boards and agencies for separate legislation that they felt would be directed to them and to their particular and specific circumstances. As a result, we have

opted to do their bidding, if I can put it in those terms.

We have not changed the Legislature's original intent, however, which was to have consistent application of freedom-of-information and protection-of-privacy principles to the provincial government and the municipalities, boards and agencies. Our legislation is to be considered a parallel to the provincial requirements and, generally speaking, I think, meets the needs of most organizations.

We will hear tomorrow, I guess, from some people from the Ontario Association of Chiefs of Police and others who will be making some points about the application of the legislation as it is now structured to police forces and police commissions, but other than that, I think, generally speaking, we have been able to put together a piece of legislation which reflects very well on how the municipal world would like to see freedom of information and protection of privacy implemented.

The people who are in front of us and Frank, who is going to be delivering a sort of technical review of this, will go through the manner in which some of the issues that arose perhaps have resulted in decisions, but I think you will find that overall we have maintained the integrity of a system we feel is working very well.

I might just pause at this moment to indicate that the implementation, so far, under the auspices of Mr Linden and his group has gone very well. The people in the freedom-of-information branch, and Frank White as the director there, have worked very hard on occasion to smooth over some of the areas where there are difficulties, but I think we have achieved a very good, balanced and rational way of implementing and making decisions on the basis of requests for information. That is not to say there has not been some disagreement from time to time, but the commissioner's office and others have worked very well to resolve most of the differences of opinion.

I think really that gives the general context of the examination of the legislation–that is, Bill 49–and Bill 52, of course, is an amending, housekeeping type of statute which is required to clean up the original bill when we pass Bill 49. I think maybe with those remarks I will let us hear from Frank and others.

Mr White: There are some handouts of about eight pages and for about 10 or 15 minutes we will just cover generally the different sections of the act and, I guess, the things we thought would be most relevant for today's discussion.

The Chair: Mr White, we want the record to show that you are the director, freedom of information and protection of privacy branch of the Management Board of Cabinet.

Mr White: That is right, of the Management Board secretariat.

Bill 49 is the municipal and local board freedom-of-information and protection-of-privacy act, which in section 55 provides that it will be in force on 1 January 1991. The act will apply to any records that are in the custody and control of organizations that are covered by the act on that date, so it is retroactive.

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On page 2 there is a list of the principles of the legislation. As Mr Elston said, the principles are the same for both the provincial and the Municipal Freedom of Information and Protection of Privacy Act and what those principles try to do is come to a balance in terms of what can be disclosed and what cannot be disclosed.

The first principle is, of course, that the public has a right to information and records that are held by institutions that are covered by the municipal act. Of course, that is subject to certain specific and limited exemptions that are detailed in the act.

Probably almost more important than that general right of access is that individuals have a right to the protection of their personal information that is held by municipalities and local boards.

Last, decisions by institutions can be reviewed independently, and of course that is the role of the information and privacy commissioner.

A lot of it is a question of dealing with the question of balance. The definition that is probably of most interest, which is in section 2 of the act, is who would be covered by this legislation. It would cover each municipal corporation and its boards. Their boards would be those where they appoint all the members. An example would be fence-viewing boards, where a municipal corporation would be part of the municipal corporation for purposes of this act.

The local boards are generally those local boards defined by the Municipal Act, and that would include school boards, police commissions, public utility commissions, boards of health, conservation authorities and so on. They would be separate institutions in terms of decision-making under the Municipal Freedom of Information and Protection of Privacy Act.

The last area would be any agency, board or commission that would be designated by regulation, so there is a catch-all if in the future

someone feels that another agency or board should be covered.

Mr Polsinelli: Mr Chairman, can we ask questions as we go along or would you prefer that we wait?

The Chair: I see no problem with that, Mr Polsinelli.

Mr Polsinelli: I have a quick question. I think you indicated in your comments that those boards that are covered are those where the municipality appoints all the members?

Mr White: That is right.

Mr Polsinelli: Does it matter whether they are citizen appointees or council appointees?

Mr White: It would be where the municipality appoints all the members, but if it appointed a citizen, then that board would be covered.

Mr Polsinelli: Would this then not cover a thing such as a police commission?

Mr White: The police commission would be a separate institution in its own right. Police commissions are covered.

Mr Polsinelli: How about health boards?

Mr White: Boards of health, yes.

Mr Polsinelli: Also under separate–

Mr White: Separately, yes. Actually, on page 6 each one of these groups is listed in the definition of "institution." Rather than giving a definition, it lists each group.

Mr D. W. Smith: What personal information do these bodies have that would not be regarded as public information? Are you thinking more of the police commissions that may have knowledge about particular–I do not know.

The Chair: Mr Smith, I think that some of the questions are going to be covered in the presentation and I think that maybe, in retrospect, it is a better idea to wait until the end for some questions.

Mr D. W. Smith: That is why I did not ask before Mr Polsinelli opened it up.

Mr White: There will a page on exemptions, which seems to be of utmost interest to everyone concerned.

That is the coverage in section 2. Again, in sections 2 and 3 there are three definitions I would like to bring to your attention. One is the "head" of the institution, and that would be the individual or individuals who are charged with making decisions under the act. In the provincial act it is the minister, of course, who would be the head of the institution. In the municipal bill it is up to the council or the board to designate from among its members who the head would be. So there is a fair amount of flexibility at the local level. They could designate the mayor; they could designate one of their members; they could designate a committee of council or of the board; there is a fair amount of flexibility. Once the head is designated, then he or she can delegate to a staff member any or all the decisions that are required under the act, so there is a fair amount of local flexibility with the municipal and local board.

"Record" is broad, meaning any record of information. It is very broad coverage in terms of what the records are.

The last item is "personal information." Again, it is any recorded information about an identifiable individual, because there is a very strong privacy protection element in this legislation. The personal information does not apply to corporations; it is just a human being.

On the next page, the access, which is covered in sections 4 and 5 and 17 to 23, there is a general right of access to records. There is no limit in terms of residence or citizenship. There is provision for fees, by regulation, with the first two hours of searching for a record free and no charge for personal information if it is myself requesting my own personal information.

Requests under the act have to be in writing, and if there is clarification required, then there is a duty on the part of the institution to help the requester to come to terms with what record it is that he or she is actually requesting.

There is the ability to transfer a request. If the upper-tier municipality gets the request but it knows in fact the lower-tier actually has the records, then that request can be transferred to the lower-tier municipality.

In processing a request, there are time limits. Generally it is 30 calendar days to process the request, and there are reasons for an extension, but they generally deal with a large volume of records that would have to be handled or processed.

Any time that a decision is made, there would be a notification that goes to the requester, hopefully most of the time saying, "Here are the records that you requested."

There is a provision for severability, severing a record, which would mean that, let's say on this one page, if that page has some personal information about me on it and that was the only information that was exempt on the record, what the local board would do is remove or blank out that personal information about me and provide the rest of the record to the requester. You would

not be able to have a report that has two lines of personal information in it and say, "We can't disclose that because there's personal information," you would remove those two lines and provide the rest of the report to the requester.

On the next page, covered by sections 6 to 16 of the bill, there are the exemptions, the limitations on access. There are two types of exemptions. One is mandatory and they start off with "the head shall refuse to disclose." What that means is that if the record or part of the record falls within that exemption, there is no choice; that cannot be disclosed. There is one exception: If the party whom the record concerns consents, then the record can be disclosed.

There are three mandatory exemptions. One is relations with governments; one is third-party information, which is generally commercial information that is supplied in confidence and some harm would result if that information is disclosed–trade secrets would be a good example –and another is personal information. If somebody is requesting my medical record, generally he is not going to get it, although I should be able to get it.

There are discretionary exemptions then, and they usually lead off with "the head may refuse to disclose." What that means is that if the record falls within one of these exemptions, then the head has a choice. The head can still disclose that record.

You will see the discretionary exemptions including, for instance, advice or recommendations, law enforcement and economic and other interests. If in fact something was covered by the advice or recommendations exemption, the head could look at that and say: "It is covered by that, but I want it to go out anyway. That is good advice and I want to show the public that I was giving good advice." So there is a discretion in all those exemptions in terms of, can it be disclosed?

The discretionary exemptions cover things such as a record of a closed meeting where a statute authorizes the meeting to be held in the absence of the public–one has to have a statutory provision for that closed meeting–advice or recommendations, law enforcement, solicitor-client privilege and so on.

That might answer partially the question about the exemptions. For instance, with respect to law enforcement I believe you will see the police have an interest, for instance, in intelligence information not being disclosed. The record of a closed meeting, I think, is something that is fairly significant for many municipal councils when they are authorized to hold a meeting in the absence of the public. They should not be able to use another piece of legislation to go around and get records of that meeting that was authorized and held in the absence of the public.

Any questions on that?

Mr Ballinger: The only comment I had is that I think it is an awful waste of the minister's time to take time from a busy schedule and be in attendance today at the request of the committee and no opposition members are here. I just wanted that point on the record.

The Chair: Thank you, Mr Ballinger. If the minister wants to comment, he will.

Hon Mr Elston: I think it is important that I be here to take a look at the questions that are going on and make sure that we can get this thing settled in and working well. Once I knew what the schedule was, I was prepared to be here for the legislation to try to make sure that I got a chance to hear what suggestions are coming out. We are pleased to get this material considered by the committee and the fact that some of us are also busy, along with everybody else, is not a reason, I think, not to be here, so I am going to be here for the duration.

1600

Mr Ballinger: Just to follow up, I have always found it interesting, in the short time I have been at Queen's Park, that in fact we have the opportunity to ask questions to the minister who takes the time to appear before the committee and what will happen is that it will end up in the House and you will be asked the same questions anyway. I just think it is a bit of a silly process.

The Chair: I think it is important that the submissions today be on the record. I think there is some importance to that. Second, I think the opportunity should be given to all parties to ask questions and those people who are here have the opportunity to do so.

Mr Ballinger: Again, we do not make a habit of beating our own minister up; that is the point I am trying to make.

Mr D. W. Smith: Since you did ask your question– When you started out here, it sounded or appeared as though you were going to open this up, and then when I get to this page on sections 6 to 16, when you look at those 10, you have almost closed it right back down again that we are not going to get any information out of these boards or bodies, municipal corporations. Do you really think that you have maybe tightened this down more than you anticipated or more than you intended?

Mr White: First of all, I think all the discretionary exemptions include that the choice can be made to disclose that information even if inadvertently an exemption covers it. There is also another section in the bill that says that, with the exception of personal information, anything that was available prior to the bill coming into force would continue to be available, so that in fact if anything inadvertently cut off something that was available to the public before, then the exemption would not apply. Most of the exemptions also have a harms test, meaning there has to be some type of damage that would occur if the information was disclosed. I have just given you sort of the side script of the exemptions, but you really have to actually go into them and take a look, and that narrows it down considerably.

Hon Mr Elston: If I might, I think too, with respect to the operation of the current act, that where there is an exemption that is used as a basis for withholding the information requested, the applicant can apply to a commissioner for a ruling. In some cases a commissioner can decide if it was a reasonable use of the exemption or in fact it was an unreasonable use of the exemption, as in the head of institution's decision, so that even though there are areas in which a person can make a decision on his or her own judgement, it is again going to be open for review.

It basically reflects the areas in which there could be sensitive information and things that might affect–for instance, law enforcement is an extremely good one where there are questions about whether or not the enforcement of our statutes or even the Criminal Code or whatever might be offended if information was released publicly. You have to give the people an opportunity at least to make a ruling on those.

I think that saying you cannot disclose personal information of an individual except to that individual is a pretty rational determinant. The rest are open to interpretation and review.

Miss Nicholas: I wanted to clarify the processing request, the fee? You said the first two hours are free, but only if it is for personal information, or if it is for general information or no matter what the information that is being requested?

Mr White: It would be for any information, but in the section that deals with fees in the act it states there is no fee associated with the request by an individual for his own personal information, so it is the other type of information where there could be or would be a fee after the first two hours.

Miss Nicholas: How does that relate to the Ontario government's act?

Mr White: It is the same as the provincial.

Miss Nicholas: I had understood that after a certain amount of time you had to pay for copies or time, but you are telling me that they are the same, in effect.

Mr White: Yes, there is a fee schedule associated with the provincial act that–

Miss Nicholas: But if it is personal information there is no fee, no matter what the duration of the investigation or pursuing the request. What would be the normal time we have found with the provincial government? Is that a good question to ask? I am just kind of curious. Do we find it within 10 minutes or a couple of hours or 50 hours?

Hon Mr Elston: John is not part of the organization, but among Terry, Frank, Priscilla and John maybe we would have some sense of it; it depends on what they ask for.

Miss Nicholas: If we get the argument from municipalities that this is going to be very burdensome and so on, if you can estimate that is it 17 minutes or 17 hours–I just do not have a feel for what kind of information people would be asking for and how difficult it would be to obtain that information. Is it readily at hand? I know with our own cases that come to our constituency, some are one call and some are weeks, months and years; I realize that, but in general, I just do not have a feel for how long it would take to obtain this kind of information.

Mr White: Sometimes it is very difficult to predict, because you really do not know where the requests are coming in. I think the thing you have to do is plan for them, have a process in place, and then you can answer the requests.

From the provincial government's perspective, I think the first year generated about $10,000 in fees. Most of the requests are answered in under two hours, and even though there is a charge for a photocopy, the requester can request to see the original. So I can ask for the audit report for some organization, for instance, and if there are no exemptions involved, I get that, I can look through it and say, "Actually, all I want is page 2, so could you make a photocopy of that for me?" Or I might say, "I've got the information. I do not need a photocopy," and it took two hours or less to find it, so there was no charge. Then requesters are usually told, "Make the request narrow; be as specific as you can about the record you are requesting, to help them in terms of keeping the fee, if any, down."

Miss Nicholas: In terms of the two hours, how do we distinguish whether they are asking for a new, a related or an ancillary request, so that in fact you are not charging them? You know how one request could move into a second and a third.

Mr White: I think most requesters now are familiar with the act. They are saying, "Consider this request 1; consider this request 2; consider this request 3," and the ministries would go along with those.

Miss Nicholas: If they come to you one week, the next week and then the next week, is there a time period where the two hours start calculating?

Mr White: No.

Miss Nicholas: Do they keep a file on people? The administration of this is mind-boggling. I am glad it has turned out to be only about, and that we have satisfied people with, $10,000 worth of service.

Hon Mr Elston: No, that is not $10,000 worth of service. Actually, those are the fees that have been paid to us for information that has been generated.

Miss Nicholas: Oh, that is quite a bit.

Hon Mr Elston: The $10,000 worth of service reflects only those people who are paying fees. The rest of the inquiries generate an awful lot more time. For instance, we have had sort of a blanket freedom-of-information request that has gone to about four or five different ministries at one time for a particular piece of information. At one point, about separate school funding, I think, if I am not mistaken, they wrote to four or five ministries or five or six different organizations to search out what documents were available. I think four of those ministries did not have anything, but each required a search to be done to see how many records were available, and then the ones who actually had the documents responded. What was the total number of requests offhand, do you know, Frank?

Mr White: Actually, the province in 1988 got about 4,800 and in the first six months of 1989 about 3,000.

Hon Mr Elston: That is taking up considerably more time than just $10,000 worth.

Miss Nicholas: What does $10,000 mean? How much are we charging over two hours? Are we charging per hour or per minute?

Hon Mr Elston: Is the fee schedule $6 every 15 minutes?

Mr White: It is $6 every 15 minutes.

Hon Mr Elston: So that is $24 an hour.

Miss Nicholas: That is very reasonable, is it not?

Hon Mr Elston: Plus the photocopying charges would be included in that $10,000.

Miss Nicholas: Okay, I was just trying to get a feel for the argument that it may be burdensome.

Hon Mr Elston: There may be some people who have a history of being more closed in response to information dissemination who may have some more problems with it, I do not know, but generally speaking, the biggest difficulties are where there is a series of technical expeditions, almost, to find out if there are reports in certain areas. Some of them have come from a person in Ottawa, for instance, who does consulting work, and he sort of has done some blanket things. The cost is always a concern and he has been quoted in the newspaper as saying, "Gee, my style of requesting information means that there will be a number of fees charged to me," but I have not actually heard from that person directly since his early concerns about the fee structure.

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I do not know whether as a director, Frank, you have heard from him or not. He was quoted in at least two or three articles at one point, saying that the fee structure was a disaster, but I think he must still be in business because I have not seen any word to the contrary.

Mr Campbell: Okay, when he started off with the act, Frank was mentioning his attempt to balance access and privacy, to get a balance between the two.

The Chair: If I can interrupt just for a minute again, and for the record, indicate that you are Terry Campbell, policy adviser, freedom of information and privacy branch. Thank you.

Mr Campbell: Right. So what I want to talk about now is the second part of the act, "Protection of Individual Privacy." This part of the legislation parallels the provincial legislation, and I guess the reasoning is that individuals expect the same level of privacy protection, whether they are talking to the province or to the municipality. The privacy part of the act, part II, is divided into two big chunks. What you see on the next page of the handout there is the first chunk, sections 27 to 35 of the legislation. These sections present rules for any institution covered by the act when it collects, uses and discloses personal information.

Generally speaking, Bill 49 says that you do not collect personal information about an identi-

fiable individual unless you have the authority to do so, and you collect only whatever personal information you need to do your lawfully authorized activity. Generally, again, the bill says that when you collect, you collect it directly from the subject individual; if you want to find out about person X, then you collect the information directly from that person. There are a few exceptions to that but that is the general position of the bill.

Once you have collected it, and assuming you have the authority and you collected it from the individual, when you go to use or disclose it outside the institution the legislation generally puts forward that you disclose and use it basically for the purpose for which you gathered it or for a clearly consistent purpose. You said you were going to use it for this purpose and that is what you then use it for.

There are certain other circumstances detailed in the legislation, such as disclosure for law enforcement purposes; if another statute in the province or the federal level requires you to disclose personal information, you are allowed to do that under the act. Of course, you can do that with the individual's consent.

So the first part of the privacy protection rules governs the rules that institutions have to follow when they collect the information. Incidentally, these rules kick in whether or not you ever get an access request. They apply if you hold personal information.

The next page of the handout is the other half of the privacy protection side, and that is an individual's right of access to his or her own personal information. Again, the legislation does set out a right of access and individuals have rights of access to their own personal information. There are some limitations to that, but generally speaking, they have the right of access.

Paralleling provincial legislation, Bill 49 says that if you gain access to your file and find something wrong in it, then you have the right to request that a correction be made or file a statement of disagreement. You can further require that past users of that information be informed of the correction if that is your wish.

So part II of the legislation is the other side of the coin, if you like, balancing access and privacy. It sets out rules for the institutions and sets out an individual's right of access to his or her own personal information.

The last part of the handout, covering sections 39 to 44 of the act, deals with the appeals process. Again, this parallels the provincial legislation in that there is a right of appeal to the Information and Privacy Commissioner, Mr Linden. I think the reasoning here is that it is consistency for the public, it is not confusing, there is one process, there is an existing expertise and an existing process in place.

Generally, if there is a dispute between a requester and the institution–if the institution denies access, for instance–you can appeal that to a commissioner and he investigates, tries to mediate, has a hearing if mediation is not successful and can make a binding order. The act does not set out an appeal process, though there is the option of judicial review, of course, if there is some worry that he has exceeded his jurisdiction or if there is an error in law. But generally speaking, his orders are binding. Any questions on that, either the privacy or the appeal process?

Mr D. W. Smith: One comment I could make: As members who get requests from time to time, would we be charged the same as anyone else acting on someone else's behalf?

Mr Campbell: A request for personal information? The legislation sets out that you can make the request on the constituent's behalf and I would suggest, unless Frank thinks otherwise, that is providing the individual with his or her own personal information, and you would not be charged for that; in other words, the question before about an individual not being charged for access to his or her own personal information.

Mr D. W. Smith: But we would still have to have a letter from that individual asking us to look into his personal information?

Hon Mr Elston: This was one of the things we talked about when we originally started to implement the provincial freedom of information. Some of our ministries were requiring that of MPPs, and we think that we have worked out a situation where it is not always required to have that. I think it is the safe route where you are actually talking to the individuals and you have them in your office. If there is any question about the sensitivity of the nature of the information that you are getting, I think it is probably prudent for you to obtain it. But where you are asked to intervene on their behalf, there is no intention of the legislation being designed to restrict your role as member.

In fact, one of the things that has been brought up before when we did a review of the provincial legislation was Mr Sterling indicating that there were too many charges associated with some of his requests, and we have taken a look at the list and I think that it has been clear in my review of it that any charges that were suggested have been reasonable ones in all cases. Sometimes when

people go on expeditions to see if they can find any information just for the heck of it and add up time and expense to the ministries and tie up people's time so that they can not be doing the work which is on their desks on a daily basis, it makes sense to have a recovery cost available. Although we are not intending to impede anybody's access to information, we believe that if they are going to be requiring us to employ people full-time to process their information requests, then we are going to have to be reimbursed for some of it.

The Chair: Are there any other questions? Any other comments, Minister, in conclusion or wrapup?

Hon Mr Elston: No, I just wish to thank the members who are here and look forward to tomorrow's meeting, I guess. If at some point there is the requirement for sections as you review this in between meetings, let us know beforehand and we can certainly have people available. If fact, Frank, Terry and myself, I presume, are sort of here anyway, so we will be a resource whenever we are required.

The Chair: Thank you very much, Minister, and your team of experts. If there are no other questions, we will adjourn until 3:30 pm tomorrow.

The committee adjourned at 1619.

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From the Management Board of Cabinet:
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White, Frank, Director, Freedom of Information and Privacy Branch
Campbell, Terry, Policy Adviser, Freedom of Information and Privacy Branch

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Municipal Freedom of Information and Protection of Privacy Act, 1989
Loi de 1989 sur l'accès à l'information et la protection de la vie privée

Municipal Freedom of Information Statute Law Amendment Act, 1989

Second Session, 34th Parliament
Tuesday 7 November 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 7 November 1989

The committee met at 1538 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989
(continued)

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION ET LA PROTECTION DE LA VIE PRIVÉE
(suite)

MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Vice-Chair: The Chair, Mr Chiarelli, could not be with us this afternoon. For the first item of business, I would like to introduce two travelling dignitaries who are here with us today visiting our Legislative Assembly: Dong-Ki Min and Byeong-Kyu Lim from the Korean National Assembly. Welcome, gentlemen.

We are starting our public hearings today on Bill 49 and our first presenter is Tom Riley, president, from Riley Information Services Inc. We apologize for starting 10 minutes later than we had anticipated. We have allocated about 30 minutes of time for your presentation. It is your choice whether you take up the full 30 minutes with your presentation or whether you allocate some of that for questions and answers by the members.

RILEY INFORMATION SERVICES INC

Mr Riley: Known to be the garrulous type, I probably will take up the 30 minutes.

First of all, I would like to thank you for giving me this opportunity to appear before you today to make a few brief comments and observations on the proposed act, Bill 49.

I would first like to introduce myself. I have a small company, Riley Information Services Inc, here in Toronto where I have specialized in freedom of information and privacy laws and issues internationally for the last 16 years both here in Canada and in the United Kingdom, and I have done a lot of work in Australia and in other jurisdictions such as the United States. I have been engaged in many aspects of freedom of information and privacy and data protection, not only as a user but as a writer, researcher, lobbyist, consultant, adviser, public speaker and so on.

I would now like to make a few brief comments on Bill 49, which we have before us here today. First, I think that on the whole the current Ontario Freedom of Information and Protection of Privacy Act is basically working quite well. As this bill is really a copy of that act, except for those clauses that recognize the uniqueness and distinctiveness of the municipalities, we have the benefit of learning from the original and making suggestions for changes or improvements.

Ontario has a progressive record in the steps it took to prepare for the implementation of Bill 34, predecessor of Bill 3. As you know, of course, there was the Williams commission back in 1979 which reported in 1980 or thereabouts, and then when there was the introduction of this bill there was extensive preparation while the bill was evolving through the legislative changes, resulting in a project in Management Board and then the current freedom of information and protection of privacy policy branch.

I think that through the extensive training, educational publications and other measures for those responsible for the legislation, those who had to administer the act here in Ontario were well prepared by the actual date of operation in January 1988. I want to commend the freedom of information and protection of privacy policy branch of Management Board as it is unique and there is no other comparable body in any other jurisdiction.

Ontario can be proud that the very clear signal of willingness to support freedom of information and to really support this whole concept of openness has been very obvious here, despite the fact that in the first year, in the three quarters of operation of the legislation, there have been certain things that have come out that could

definitely be called of embarrassment to the government, and if not to it, then to individual ministries. None the less, I do not feel any sense of the spirit of openness or belief in freedom-of-information legislation declining at all. It is unique because even though Treasury Board at the federal level has similar functions, in fact it is part of an overall branch responsible for information practices.

The only other comment I want to make about that in relation to municipalities is that I understand these measures are still ongoing and that there are now a number of steps being taken to prepare the municipalities. I think that now we are going into a stage where, when the municipalities, local boards and all the other commissions come on board, this is going to actually represent such a really giant leap in freedom of information in the province because there are so many agencies that will come under this.

I think that in this respect the role of this office becomes even more important, and I think even more so from the point of view of the smaller municipality. In terms of Toronto and Ottawa, I know that already there are steps under way, that Metropolitan Toronto is undergoing serious preparations administratively, financially and in terms of personnel, as is Ottawa, and I am sure, Windsor and Kingston.

When it comes to the smaller municipality, I think one day it is going to dawn on the staff that a new day has come and suddenly they will have before them a very interesting piece of legislation. Whereas before, if somebody walked in and asked for something, you could say, "Well, I am sorry, Joe, but I do not feel like giving it to you today," now he can say, "Well, I am sorry, Mr Clerk, but in fact we have a freedom of information act." Perhaps it may even be like that in some of the very small townships, villages and municipalities.

I think the fact that the freedom of information and privacy policy branch Management Board, is concerned with such things as a hotline and other things where municipalities are going to be able to call in is very important.

I started off mentioning this because I think that in addressing any issues dealing with municipalities, we have to take into account this whole concept of the different sizes of these municipalities. In looking at this legislation and dealing with it, I think it is important to look at it in terms of this perspective.

It is very easy when we sit here in Toronto to think, "Well, in Metropolitan Toronto they'll get the resources and they'll get all ready and so will Ottawa or Kingston," but I try to look at it from the point of view of some small village or small town like Williamstown or someplace up north and how the people up there will react to it. I think my presentation has looked at it from that view. Also, I am making some comments on the current legislation as I think it is relevant to this bill we have before us today.

The first issue I want to raise here today is fees. It is one of the most vexing questions under all access to information and freedom of information legislation. There is no doubt about it. In my 16 years in dealing with this I have found that this, and the question of appeals and the matter of how long it should take to make a request, is one of the most sensitive questions, and causes the most abrasive arguments when it comes to freedom of information. But fees, I think, have taken on a perspective out of all proportion, perhaps because we live in times of fiscal restraint.

I must first emphasize, of course, that when I talk here about fees, I am really talking about under the freedom-of-information regime of the legislation, because even though under the act it is able to charge them, Ontario does waive fees. I must say that is a tradition in all jurisdictions that have privacy legislation. I know of nowhere where fees are charged.

Such is not the case when it comes to accessing government documents. It is this area that represents a political minefield for government. It is through freedom of information that the government of the day, a ministry, an official, a company–I am talking about those who submit third-party information or others who have submitted similar types of information–can be embarrassed through the release of information that could have very far-reaching implications. It is not an easy piece of legislation.

Fees can be the sword with which to cut back its effectiveness and this is why I raise it here as the first issue to be explored. I emphasize that fees can be used as a barrier to access, not that they generally are. However, there are cases in many jurisdictions where fees have come to be used as a means to discourage requests. Even under Ontario's current Freedom of Information and Protection of Privacy Act, some users have complained about having to pay fees for documents they are seeking.

I might add that one of the things I hear often is the fact of having to pay deposits, especially when it involves these third-party requests. I know there are a lot of documents in them.

I guess the real problem you have here, members of the committee, is very simple. When a guy gets a bill that says, "This is going to cost $2,000 and please put $1,000 upfront," you do not know whether you are going to get 600 pages of blanked out information that simply might have the name of a document at the top of it. It is a very difficult and vexing question to have to deal with.

Although Bill 49 allows for waiver of fees and sets out the criteria under which this can be done, it none the less can represent a major stumbling block to the requester. As search, preparation and photocopying time can be charged, it is possible for the fees for a simple request to mount quickly, even if the first two hours are free time. Certainly, many argue, fees should be levied if the information is to be used for commercial purposes. That is not a bad argument, and it has some merit. However, I would like to cover that.

Should they be charged at all? That is the question I want to ask. To do that, I have done a brief analysis of two jurisdictions that are very relevant to Canada because they are similar, the United States and Australia. The first is the United States.

The United States Congress in 1986, in amendments to the then drug bill to handle the drug problem in the United States, tacked on amendments to the Freedom of Information Act because of pressures from law enforcement agencies. At that time, a compromise was reached. When the subject of law enforcement records was radically changed by an amendment, the Democrats were able to get a compromise. They were able to set up three levels of fees that could be charged.

Very briefly, they are fees for search time and duplication and review time, and that would be for commercial requesters; search and duplications for all other types of requests; then they had a waiving of fees. The waiving of fees was given in the public interest, and also the language is very clear: It does not just say "the public interest," because I think they understood that "the public interest" is one of these ambiguous phrases that has never been defined. As a matter of fact, if you go into any data bases or libraries looking for literature on public interest, the first thing you will come away with is that there is no real definition of it.

However, they said that not only in the public interest would it be waived, but "because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." What this meant for waiving is essentially that journalists were the ones who benefited the most.

The latter has been interpreted to mean primarily journalists making requests, but even here there have been stumbling blocks, as many agencies have questioned freelance journalists seeking this fee waiver. Many of us have perhaps been interviewed at different times by freelancers who might be preparing an article for Canadian Press or some major newspaper or magazine, but have not necessarily sold it yet.

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Again, I only raise it as an instance of the kinds of problems that can arise when you try to set these fees. In some instances, agencies in Washington have even asked for proof that the material got under the Freedom of Information Act will actually be used for publication. This standard is difficult to meet, as often the freelancer is gathering material to better sell his story.

Then there are other questions that have come up. What about publications of large associations, unions, church groups, of which there are many in the United States and many are very large, or other groups? Are they eligible for the fee waiver? That is the other question that arose.

This is one of the many examples of the stumbling blocks that have been encountered in an attempt to set fair criteria on fees. I think my point is that you cannot set fair criteria. Whatever you do, you are going to have a problem with it.

This particular section of Bill 49 reflects the user-pay philosophy very popular in these times of fiscal restraint, burgeoning deficits and attempts at cost-cutting by all governments.

The same philosophy was applied in Australia where in 1987 amendments to its act resulted in a substantial increase in fees; in one example, $30 an hour for search and preparation time alone; no free time. Although the government of the day, a Labour government, pointed with pride to the amendments and the savings passed on to the taxpayer, the one to suffer was the consumer. I mention this here because in smaller municipalities I believe the people who are going to benefit the most are the entrepreneur, the farmer, the small businessman.

Back to Australia: The annual report for 1987-88 of the Commonwealth's Attorney General showed that in the first year of operation of the new fee structure, the number of requests per annum dropped 2,451; that was 29,888 in 1987, when the fee structure took effect, down to 27,429 in 1988. I understand, in talking to people

from there since then, that it is even more on the decline. What has happened is that people who do not have a lot of resources think, "This is not worth our while."

The same report also shows that in 1987-88, the total fees collected in all government agencies were $312,000 Australian as opposed to $21,977 in 1984-85. Yet the same charts indicate that the total cost of administering the act was $11.5 million for that 1987-88 period. Thus, this reflects a doubtful saving when the ones to suffer were the requesters who do not have the financial resources to make the request because the fees became prohibitive.

Again, this is a vexing question about administration. Look at all the suboffices and subsections that come out of the administration of freedom-of-information legislation. You have administration in the departments and others where they get advice from their lawyers or they check with other officials in the department who have to review the documents. That takes up time. Obviously that is using money.

Then, of course, like your people in Australia for example, you have the Ombudsman here, the commissioner's office, the policy branch office. You have all these areas that are taking from the public purse, which is important and is needed for the good administration of the legislation, but it really brings into question, when you put the number of fees collected against the total cost to government, whether this is really necessary.

For example, the Treasury Board of Canada's Summary of Operations, a booklet put out quarterly, for the period 1 July 1983 to 1 March 1988 indicates that in this time period there were a total of 20,100 requests. That is under the Access to Information Act and that is over a six-year period. In the same time period, the cost of operations of the act–for requests, not the information commissioner's office or the other services provided by the Department of Justice and Treasury–came to $18,352,977. I think the comparisons are obvious.

It is apparent that fee collection is almost minimal, even in Australia, when set against the actual costs of operating such legislation. Fees should be abolished except for photocopying costs; I see no problem with that. Of course, there should be some kind of payment, and definitely for photocopying, but even there it is the taxpayer who often provides much of the information in the first place.

Someone once made a joke and said that if there was a revolution in America and there was no taxation without representation, maybe under freedom of information there should be no taxation without information. In this case, in a sense this is acting as a tax to the user when you really look at it. It is yet another tax.

Arguments are made that commercial users should be charged, but as I have said, because they potentially stand to gain from it. True. But then what criteria shall be set that do not all at one point become arbitrary? The question is, where shall the line be drawn?

I think in the final analysis the legislation should be there to help the average person, the actual consumer who can see this type of legislation as a means to get behind what government is doing and why. This holds particularly true at the smaller municipal level as there are people more involved with their government than perhaps at any other tier of government. I think this is what we are going to find when this legislation comes into effect.

This will apply to the large municipalities, such as Toronto or Windsor, where a requester might be seeking documents on future property developments, possible zoning changes, proposed tax structure changes, licensing information and a myriad of other types of information. We, as just residents of this city or any city where you come from, might be able to realize just what you yourself might be interested in, what your city council is up to. I think they are going to see a fair number of requests. We certainly saw them in the province of Quebec, and Quebec and Montreal both have had their interesting run-ins with people seeking access requests.

At the smallest municipal level, small businessmen, farmers and others will have many reasons to use this act. I think fees can be prohibitive. Even photocopy fees might have to be designed and set by regulation to reflect the size of the community. Someone being charged 25 cents for a document in Toronto, which may amount to thousands of pages, might not find this is as prohibitive as someone in the same profession or business in, say, Thunder Bay. Economic circumstances are different and photocopying fees should reflect this in any regulations, leaving the discretion up to the individual institution while perhaps setting a maximum of 25 cents that can be charged.

The province of Quebec charges for duplication fees only and it does not appear that the government has suffered financial hardship. As a matter of fact, I have not seen anything come out of Quebec where there have been complaints from either the Treasurer or anyone in the cabinet saying that we should start charging fees. Ontario

is a wealthy province and it does not need to levy unnecessary fees. All governments spend millions, in some cases billions, on their public relations programs, letting the people know about their good deeds and providing essential information.

All I have to point to is today's headline where we found out about some video that cost $780,000. Not that I am here to comment about it, but the point is the money is available to make it known for public relations programs, which is fair enough. The people need to know about government programs, but at the same time I think we have to put this whole question in perspective.

Freedom of information is an integral right given to people. It is only in recent times that this idea has entered the democracies, with the exception of Sweden, which goes back to 1776. It is one that shall come to be fully appreciated with time as its effects on our whole democratic system become apparent. Freedom of information is the quiet revolution of our times and it is only proper that individuals should have the ability to fully exercise that right without financial encumbrance. In my brief I said "with." It is "without."

Citizens are not required to pay for a host of other public programs, and I think I have made the case on fees.

Also, the whole question is accountability. On this question of accountability, I think there is one glaring anomaly here and that is that universities are exempted from the act. As you are aware, this came about due to a last-minute amendment under the present Freedom of Information and Protection of Privacy Act, which effectively exempted the universities. Yet this is a serious imbalance considering that all other educational institutions in the province are now subject to the legislation. Why should a community college be subject to access and not the universities?

In the United States under the Family Education Rights Act, there was an amendment called the Buckley amendment in the 1970s, which allowed every student in the United States access to his or her file. Again, it is not a privacy protection, but it was a privacy right, their right of access and correction.

Accountability has as part of its premise that those who receive government funding are responsible to the people for their actions. I am sure that there are many who would be interested in knowing about different aspects of various universities, especially in these times when they themselves are going through such changes, including difficulties with funding.

I know people who talk about the fact that it would always be interesting to make a request on how research grants have been used and perhaps what the results might be, if it is other than confidential information. Many examples could be given.

But there is another, perhaps more important, element and a more pressing reason why universities, I believe, should be included and that is the question of privacy. Privacy is an issue that I believe is going to drive the 1990s. It is something that is there, sitting out on the edge of our surface and our awareness. Everybody says something has to be done about it, and I think the time will come when this will overwhelm us like a tide. Technology is here with us and it is going to have its impact.

By excluding universities, the bill essentially wipes out the privacy rights of thousands of university students in Ontario who, interestingly enough, if they had just come from a high school once this was passed, would have had that right and then they will go to university and that right will then be taken away–the same rights enjoyed by those who attend community colleges and other like educational institutions.

The other constituency to consider in this is employees. Employees, when we develop these pieces of legislation, perhaps, are often overlooked, but they are the ones who many, many times benefit the most at all levels of our government, federal and provincial. So this is an issue that is important and I think that universities should be included for many reasons.

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The principle of openness to apply here might be that any agency or crown corporation which receives 51 per cent or more government funding should be accountable to the people and subject to freedom of information and privacy legislation. I think that should apply not only to universities, but also to these other agencies.

I think also while on the subject of privacy, it is germane to note that another concept missing in both Bill 49 and the current Freedom of Information and Protection of Privacy Act, under the personal information section, and this is a very contentious issue, I know, among ministries, and that is the question of the right of the commissioner's office to conduct audits.

I would like to elaborate on the right to go in and ensure that personal information in both manual files and automated data banks are being kept as they should. This power is important. It is

recognized by many that an integral principle of privacy laws is not only the right of access and correction by the individual of his/her own file, but the fair information practices set out in such legislation. As a matter of fact, if you read the act, it says "protection" not privacy; it does not say access to personal files. It does make that statement and, therefore, means inherently that the principle is there.

I do not need to lay out the principles of fair information practices. They are in this legislation. But other jurisdictions, and as you know, including the federal Privacy Act, bestow this power of audits to ensure that the principles are being adhered to. The fundamental philosophy underlying this concept is that the vast majority of citizens will never actually ask for personal access to their files. Yet privacy statutes implicitly state that the personal information of all individuals on whom the government keeps files shall be protected.

Misuse of information or improperly keeping information in files or data banks, or the myriad of other potential abuses, can mean the privacy rights of an individual are being abused. This can stem not necessarily from wilful abuse on the part of officials handling the information, but just as much from imperfect administrative practices or a lack of sensitivity to privacy issues.

As a matter of fact, I heard about one case sitting in a cinema. I heard two people talking and they were from a stockbroker's firm, and they actually said they were seriously considering checking out one of their friends because one of them had access to his company's data banks from home through his terminal. So then, again, it is a very funny example of privacy, because in an easy moment where, you know, they decided, "Let us see what this guy is up to," they just simply slip into his data bank because the person had access. This is why this message of privacy is very important and there is the need to communicate it.

So, though the legislation puts the onus on officials to apply strict standards for the collection, retention and distribution of personal information, it is still just as important to have an external body checking that this is being done as it is for the citizen to have the right to lay a complaint. As the individual is not in a position to know if his information is being kept properly, then the power of audits becomes important.

Essentially what you have here is 98 per cent of the citizens, I think, in this province, maybe 99 per cent, will never seek access to their personal file. They may never make a request. There is no way of knowing how their information is being kept, and the person does not even know if there is some way their information is not being kept properly, and when they do find out, they can lay a complaint. That is the intrinsic power of audits. And I know on municipalities, it may be more important for larger municipalities. I am sure in a small one where you may never even get an access or privacy request, something like this is not as important and needed.

But looking at the overall scheme of the bill, from its whole spectrum, I think it is important. Therefore, I recommend that the information and privacy commission be given the additional power to conduct periodic audits at all levels of the government, to which both Bill 49 and the present Freedom of Information and Protection of Privacy Act apply.

The last item I would like to deal with here is that of electronic records. I think that is important. With the implementation of the automated office throughout so many government offices and the increasingly greater amount of information being stored in automated data banks, the whole question of electronic records now becomes very important. First, it is important that this automated information be easily accessible to any member of the public.

I think rather than reading all this, briefly I will say this. There is a lot of information being accessed now. I think it might be wise that somehow at one point there be a study done on the impact, and perhaps this committee could order it, of electronic records and automation on the Freedom of Information and Protection of Privacy Act and also the information of this piece of legislation.

I have also put in here another idea I say might be practical for the future, and that is as access requests are made, perhaps a system could be developed where when a request has been made, it can be indexed, now I am talking about manually or electronically, such that when there is a request in the future, what you are going to have is, instead of having to go through and make a whole new request again, you would simply be able to access through this indexing or administrative system, which I think could be a small change put in the legislation, which would then make it easier and also be economical and saving of the time of the co-ordinator.

On the whole question of developing databases on access requests: Once an access request is made, there might be an opportunity to be able to put the information into databases which can then be made available to the public at large, who

are now already in vast numbers accessing government and private databases. Again, this would only, of course, be information that has already been deemed to be releasable under the freedom of information act.

I think, as my time is running out here, I would just like to say in conclusion that the proposed act for the freedom of information and protection of privacy is a progressive piece of legislation. Many municipalities, local commissions, school boards and others may never use the legislation. However, I think it important that when the committee is reviewing the feasibility of this legislation, you also keep in mind that there are wide differences between all municipalities and that particular problems for the larger municipalities might have to be addressed differently. After all, the municipality of Metropolitan Toronto administers a population which is almost the size of New Zealand and much larger than that of many provinces in Canada.

Regulations might be needed separating the larger institutions into departments or agencies under them, just as the freedom of information act requires requesters to apply to individual ministries and agencies. It does not say, "Make an application to the government of Ontario." I think that is an important point when you look at the size of some of these larger municipalities. But I am sure you will be hearing from municipalities and their representatives who will be giving you their own in-depth views and perceptions on this.

This proposed act is important and I trust some of the suggestions, comments and recommendations I have made here today have been of some use to you in your deliberations. Thank you for allowing me to make these comments.

Mr Sterling: Thank you very much, Tom. I have known Mr Riley for some period of time, having been involved with freedom of information, and Mr Riley is a–

Hon Mr Elston: For a long time.

Mr Sterling: That is a long time; too long. One problem that I am having with the freedom of information act is the time limitations allowed to a ministry to react. I am experiencing that the 30 days that they are given to respond is now being used as a minimum rather than a maximum, and they invariably, if they are stonewalling you, ask for a further period of time regardless of the kind of document that you are after.

Do you think that you could define a document and a situation where we could give a shorter period of time?

Mr Riley: I think the solution is not defining, because then you get into, as I mentioned on the subject of fees, setting up criteria and you get into so many variables, with the large departments and so many documents. I think the short answer to that is the American approach. They are the only ones who allow for 10 days and nobody ever follows the 10-day requirement in the United States. I should not say no one, but a large percentage does not.

But the difference is, because of that principle that you have to respond as soon as time allows, because information is timely, it goes beyond that. It goes into very practical administrative things that happen, and that is, with the 10 days they are then required to give you an answer, even if it is saying, "We're preparing it now; we're going to take longer," or even to say, "We're going to send it to another agency," or "We have to do more preparation," or "We have to consult."

I think what you are saying with the 30 days, what it is doing is going to the limit. I think the Treasury Board asked for a study on that, on the whole role of the co-ordinators, and one of the things that came out is, and Inger Hansen, the Information Commissioner of Canada, in her submission, made this very point: that the time limit ends up meaning that the very last day you send the letter or make the phone call. I think the solution is to move it back and I think everybody will recognize that, yes, it is impractical, but also it is putting there the principle of it. That is the way I would answer that.

1610

Mr Sterling: Another question, if I may. I have just one more. Do you think the general public would have an objection if members of Parliament or members of the provincial Legislature were given some kind of preferential treatment under a freedom of information act?

Mr Riley: Considering the public's view of politicians, yes.

The Vice-Chair: Wrong answer.

Mr Riley: No insult meant. I mean the public perception. Seriously, I think the difficulty with that is then you will get coming in–to put this on a more serious note, having made my crack for the day–somebody is going to come along and say, "Okay now, we are lawyers and we are dealing with this very land deal, so how come we do not get preference?" Especially in municipalities, you see some guys coming in and saying: "Look, I am about to make some major presentation to council here. Why is it that Norm Sterling from

Carleton can go ahead and he is getting his request 20 days ahead of me and I have to stand in line?" I think the perception would be that there would be an unfair balance.

Mr Sterling: I guess my differentiation would be that I was elected to basically do that and that was my primary job. For instance, we were assured in the debate on Bill 34 that no MPP would ever be charged for information. As soon as they wanted to stonewall me, they started charging me for information.

The other thing that I found in terms of requesting polls, I got an anonymous telephone call that there was a plan to stall me on it and that everybody was going to give me 30 days, wait for the 30 days, and then ask for an extension, which proved to be the truth of what actually happened.

The other thing too is that I think I have a greater duty to the public than a private interest does. A private interest has its own agenda, but I have a public duty.

Mr Riley: I am not so sure I would agree with that, because I think in some cases where you had associations, let's say the Canadian Bar Association or the Canadian Manufacturers' Association–

Mr Sterling: They all have their own axes to grind.

Hon Mr Elston: Or journalists.

Mr Riley: Or journalists, that is correct, but the journalists would argue that they want to get it out because they have the public to serve.

I understand what you are saying, but part of what I perceive also is that you are getting into the basic problems that always face us with access to information; in other words the stalling and delay tactics. I think that is why I tried to address some of these problems today of how we can cut it back to make the system smoother and not present these opportunities for individuals to stonewall you, or anyone else for that matter.

Mr D. W. Smith: I will try and keep this as short as I can. On page 8, you are talking about electronic records. Maybe I am reading something in here that is not there, but do you believe there are more people breaking into these electronic systems than we possibly even hear through the media? I presume you are referring to hackers.

Mr Riley: Actually, I was not. What I was referring to was just public databases where it is not confidential. As to hackers, yes, there are estimates that it is far wider, especially in private corporations that do not want to admit they are being broken into. But I was referring more to actually putting into electronic databases information which has already been released under the Freedom of Information and Protection of Privacy Act to make it a greater tool for interaction between government and the private sector. Perhaps I was not clear enough. Was there a specific paragraph you were thinking of?

Mr D. W. Smith: No, I was maybe reading something into this.

Mr Riley: No, that was not referring to hackers. It was more just an idea I wanted to flow, that is why I did not read it out. It was just an idea.

On electronic records, the state of New York is already developing legislation on how to charge for accessing electronic records under its open-government legislation, because it is not going to happen at the federal level in Washington for many years. Nothing ever takes a few months there, but there is a lot of attention on this whole question of electronic records and I wanted to include it because I felt it was an important issue.

Mr McGuinty: I am intrigued by your concern regarding what you refer to as a glaring anomaly, in that universities are exempted from the act. You cite, in support of that glaring anomaly, the alleged case of a woman who has attempted to gain access to her file at a university but "of course"–which may or may not be a matter of fact, opinion, judgement, inference or whatever–she has been unsuccessful. Why are you so sensitive to this particular aspect of freedom of information?

Mr Riley: I cited the case only because the woman did apply because she thought the privacy act applied to her and she called me and asked for advice on it. I checked around and it did not apply. When I say "of course" there, it is not actually a subjective opinion. It only means that in the terms of reference of the legislation, the legislation does not allow it. That is what I mean by that.

As for the sensitivity, I think mainly because as a privacy advocate looking at it in the wider scheme of things, even though I mention the freedom of information side, you will notice that I did spend a little more time on the privacy part because I felt that there is an imbalance if you are allowing the right of access by so many different groups and agencies to their personal files and also the right to have those records kept.

Mr McGuinty: Are you alluding mainly to such things as students having access to files?

Mr Riley: Yes.

Mr McGuinty: Mainly or exclusively?

Mr Riley: No. Students and employees, of course. I mean both.

Mr McGuinty: Exclusively?

Mr Riley: Yes exclusively.

Mr McGuinty: No other aspect of the university operation?

Mr Riley: As I mentioned under freedom of information, if it came under this legislation, of course, then you would be able to access it just like you would be able to make a freedom-of-information request to access–

Mr McGuinty: Access what?

Mr Riley: Whatever documents are there, whether on research grants or funding.

Mr McGuinty: Have you ever talked with people at the universities with regard to this?

Mr Riley: No, I have not. I know there is allowance for this in Quebec. As to how it works, there have been instances where there has been information released from McGill, and Laval University has given up documents on studies it has done.

Mr McGuinty: Supposing a case which would not be completely hypothetical developed in this manner: research was being conducted at considerable expense over a considerable period of time, which research was financed perhaps by the university itself and some bodies outside of it, and the implications of this research could have fallout effects, either regarding national security or even development of things for the marketplace. Would you persist in–

Mr Riley: Oh no. If you look at the current Bill 49 before you, there are provisions for what we call third-party requests. What is protected there is scientific, technical, commercial and financial information. If you look further–I do not know the section–anything to do with national security would, of course, be automatically exempt.

What I am saying is that there were would be an access right like everyone else, but like everyone else, they would also come under the same restrictions that any government ministry does or any municipality or local school board or agency or commission. So all I am talking about is the access rights as defined narrowly, and they are–when you look at the exemptions, that section gives a narrow definition of what you can access–and I feel the same should apply to universities.

In your hypothetical case, probably what would happen is, first of all, the official who was responsible for it would stamp this confidential and if an appeal were to be made, I am sure there would be a very good case to be given to the commissioners as to why the information should not be released.

Mr McGuinty: Sure. I would, in concluding, respectfully suggest that you have a tiger by the tail here.

Mr Riley: I am sure I do. That is why I was exempted last time.

Mr McGuinty: I would be very wary in dealing with allusions to alleged anomalies of this kind as they apply to universities, because I think the significance of what you are referring to goes considerably beyond what you envision.

The universities, as they have developed in western society, are the critical, reflective intelligence of society. They are the buffer between the individual and society, and they have certain rights. I know those rights are often exercised and promulgated and reflected without a corresponding respect for obligations, but nevertheless I think the rights are there. I think it is a very, very serious issue here which I do not think you really do justice to, but I really appreciate your drawing attention to it.

Mr Riley: Fine. Thank you very much.

1620

The Vice-Chair: Mr Riley, thank you very much for your presentation. We appreciate your taking the time to appear before us.

Mr Riley: Thank you, Mr Chairman and members of the committee.

The Vice-Chair: The next presenters are from the Ontario Association of Chiefs of Police and from the Municipal Police Authorities. I understand we are going have a joint presentation.

Hon Mr Elston: While they are moving to the presenting area, Mr Chairman, Mr Riley has made some interesting suggestions and, while we will be undertaking a review of the operation of the act, we will keep his presentation in mind.

I agree with Mr McGuinty that the same discussions that surrounded the universities last time would make for interesting reading for us before we proceed too far out there. But certainly we have a number of items, particularly the suggestions by Mr Sterling, for instance, about delay and otherwise. I am going to undertake to provide, if I can, the next day we sit, an update on the response times, if possible, so that we can know a little bit more about the background to response times and how many requests for extensions have been made and granted, and otherwise.

The Vice-Chair: Thank you, minister. Perhaps Chief Edwards can introduce the other members of his delegation for the record.

Mr Edwards: My name is David Edwards. At the present time, I am the president of the Ontario Association of Chiefs of Police. Our association has a subcommittee to deal with the freedom of information act. On my left is Staff Inspector John Garswood from the Windsor Police Force, and on my right is Inspector Barry Turnbull from the Peel Regional Police Force.

The Vice-Chair: Thank you very much. We have allocated approximately 30 minutes for your presentation. You have the choice of using all of that time for your presentation or you may want to leave some of it for questions and answers. I will, of course, use the same amount of discretion as I have with Mr Riley if your presentation goes over the 30-minute period.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

Mr Edwards: The Ontario Association of Chiefs of Police wishes to thank the members of the standing committee on administration of justice for the opportunity to make this presentation today. May we open our presentation with some general remarks concerning the legislation.

The police service is very supportive of legislative initiatives that guarantee the privacy of personal information. We have been actively preparing for the proclamation of Bill 49 through the efforts, as I have mentioned earlier on, of the Ontario Association of Chiefs of Police subcommittee. Our preparation and training are aimed at steering the positive aspects of the legislation and the importance of complying with the spirit of the act. We do, however, recognize that there are likely to be substantial costs involved.

At this time, I would like to turn this over to two members of the subcommittee to make their presentation.

Mr Garswood: Today we would like to emphasize two of the principal recommendations we have for change in the act. Our recommendations have been previously submitted. They were submitted on 31 January of this year to the freedom of information and privacy branch of the Management Board secretariat during the consultation process. I see Frank White is in the room today and it is to him specifically that we have submitted those concerns, along with one in September.

For your information, we have included as an addendum to our submission today the 31 January submission that was made to Mr White. While there are some section and number changes, the recommendations still apply with the same figure as they do to the municipal-oriented bill.

Our first recommendation is simply that the Board of Commissioners of Police or committee of council and the municipal police force be designated as separate institutions, each with its own designated head. The Police Act defines a board as a board of commissioners of police. In section 4 it defines the method of establishing a police force and in section 8 it defines how a board is created.

Based on the provisions of the Police Act, it is clear that the police force and board of commissioners of police are separate entities. The board is responsible for establishing the rules and regulations by which a police force operates and ensures that the police force is adequately equipped to carry out its mandate. The police force is responsible for the policing and maintenance of law and order in the community on a day-to-day basis, and functionally we believe it is also clear that the board and the police force are separate entities. That distinction between the entities is further emphasized by the information that each maintains.

The board maintains information concerning the governing of the police force, whereas much of the information maintained by the police force is oriented to everyday enforcement activities.

If you are following along on the brief, I will condense some of this by going over to the next page. Section 3 stipulates the manner in which the head of the institution shall be designated. For police purposes, all of the options identify a member or members of the board of commissioners of police as the head. This in effect authorizes a member or members of the board to review sensitive law enforcement information and determine its disclosure. In effect, nonpolice personnel would be reviewing information that was potentially supplied in confidence and that may seriously impair or threaten the safety or health of an individual.

Our second recommendation is to add to subsection 4(2) the phrase "with the exception of subsection 8(1) clauses (d) (e) (f) and (g) and section 13."

As I am sure you are aware, subsection 4(2) deals with the severance of a record, which is quite briefly put, the requirement to go through the document line by line and stroke out, black out or delete by whatever method, information that should not be released.

The exceptions have to do with disclosure of the identity of a confidential source, endangering the life or physical safety of a law enforcement officer or any other person, depriving a person of the right to a fair trial or an impartial adjudication and interfering with the gathering of or revealing law enforcement intelligence information.

In the initial setup of municipal police force freedom of information offices–and that is what we are doing now; we are well into that process–most forces are ensuring a police presence. However, as matters become routine and people become complacent, we believe the risk of human error will also rise. It is our desire to eliminate this risk wherever it may have life-threatening consequences and therefore we ask for this exclusion.

In considering the above recommendation, one must remember that the criminal elements of our society do not require the same levels of proof as the judicial system. They are capable of taking ruthless action on evidence that may not amount to much more than mere suspicion. We have been given broader powers to collect information and correspondingly we should have, for the protection of the public and the protection of everybody, a broader power to protect that same information.

Mr Turnbull: In addition to what Staff Inspector Garswood has pointed out, I would like to go over a few notes that I made. Since a single member of a police commission does not have any authority to give instructions to police officers, the choices for head of the institution are limited to a committee of the board or the board itself. While it is true that all of the decision-making responsibilities of the head may be delegated, it does not necessarily follow that they will. An example of that could be found in section 6, which deals with draft bylaws. The board may not necessarily wish to delegate that responsibility.

In some municipalities, the board or committee of council may very well decide to retain some of the head's responsibilities in order to maintain more hands-on control. In these situations, we foresee difficulties in complying with the time limits imposed by the legislation as most boards and committees of council meet only once a month. They are not full-time members of the police organization. If the act is not changed, it may be necessary for boards to meet more often in order to properly comply with the requirements.

1630

The Vice-Chair: Perhaps we can have the chairman determine what the bells are ringing for. If they are ringing for a vote, the standing orders require that we adjourn for the vote. Perhaps you can continue with your presentation if the bells do not bother you.

Mr Turnbull: There is also a problem of semantics to clear up in the definition of "institution." The definition refers to "police commission," and in the context used, this would appear to mean board of commissioners of police. As a "police commission" in Bill 49 is not defined, one looks to the Police Act for clarification and finds that "commission" under the Police Act means the Ontario Police Commission, whereas "board" means a board of commissioners of police.

The Vice-Chair: Excuse me, it is a vote on second reading of a bill. Under the standing orders, the committee is going to have to recess. Perhaps we can have someone determine whether or not the vote is going to be within the next few minutes.

Miss Nicholas: It might be a 30-minute bell. I will check.

The Vice-Chair: We may not have time to finish the presentation. I am just trying to give you advance warning of that.

Mr Turnbull: This will only take a few minutes.

Does the term "police commission" in Bill 49 purport to include board of commissioners of police, committee of council or trustees of a police village carrying out the duties of a council?

In years gone past, just as the courts dropped the term "police magistrate-provincial judge" in order to appear more impartial and separate from police, the government of Ontario and the police have sought to keep law enforcement separate from politics. If the police force is not defined as a separate institution from the board of commissioners of police, committee of council or trustees, then this legislation has created the opportunity for political interference with policing in this province.

The other question that arises from Bill 49 is, under the definitions of "institutions" and "head," is should the governing bodies of municipal police forces have access to law enforcement information, and further, do they even want it? We should not and do not share the operational material of the police force with the board of commissioners of police. We have special dispensation to gather and use personal

information as police officers under Bill 49. Accepting our recommendation today enhances and furthers our ability to comply with the spirit and intent of this act by permitting us to protect personal information gathered for law enforcement purposes.

The justification for the special authority granted us is found in section 66 of the Police Act and in regulation 791 under the Police Act. Section 66 is the oath of office which must be sworn by every police officer, and regulation 791 under the Police Act is a regulation dealing with discipline. It establishes a code of offences and procedures for the trial of persons for alleged breaches of the code of offences. One such breach is the breach of confidence under that code.

The members of the boards of commissioners of police are not subject to this code of offences or trial procedure for breaching a confidence. Under the existing laws, the boards of commissioners of police do not have access to sensitive law enforcement documents. They have no need to, as they are not involved in that aspect of law enforcement. Boards of commissioners of police and police committees are responsible for the government of the police force and the development of policies, not the day-to-day operations of the force.

We are certain that this government does not wish to introduce legislation that in its present form might lead to embarrassment or result in physical harm to members of the public. With the success attributed to our Crime Stoppers program, it would be counterproductive to introduce legislation that has the potential to raise apprehension about the ability of police to maintain complete confidentiality of the information supplied.

One of the stated purposes of the Municipal Freedom of Information and Protection of Privacy Act, Bill 49, is to protect the privacy of individuals with respect to personal information about themselves held by institutions, and to provide individuals with the right of access to that information.

Generally, personal information may be collected only from the individual to whom the information relates. An exception to this rule is provided where the personal information is gathered for the purpose of law enforcement. The duty to notify the individual to whom the information relates also does not apply where the personal information was gathered for law enforcement purposes. Personal information gathered for law enforcement purposes also is not subject to the requirement that the head take reasonable steps to ensure that it not be used unless it is accurate and up to date.

These exceptions appear to us to have been written with a view to recognizing the needs of law enforcement and the expertise that exists in police forces to assess and evaluate the personal information gathered.

The act stipulates certain exceptions that allow for the disclosure of personal information. This would enable police forces to share personal information gathered for the purpose of law enforcement with their boards of commissioners of police in only those circumstances that apply– in other words, where it is necessary. It is clear that law enforcement has been given broader powers to collect information, but then is expected to share that information only with those people trained to assess its significance.

Does the Board of Commissioners of Police fall into this category? Is the board considered to be a law enforcement agency or is it a branch or committee of the municipal or regional council assigned to oversee the general operation of the police force? These questions, we feel, need to be considered along with the issue of police force and board of commissioners and their being defined as two separate institutions.

Mr Garswood: I will go to the second recommendation and just a few more comments on that, concerning severability.

Our past representations pertaining to freedom of information have stressed that records relating to confidential sources of information, active cases relating to court proceedings and law enforcement intelligence information should be exempt from disclosure in their entirety. The fear has been that the proper administration of justice in relation to cases before the courts may be compromised and the health, safety or even the life of a confidential source of information, a witness, a police officer, an informant or any complainant may be threatened through a severing process no matter how judiciously it is applied. Experience with the act has not allayed these fears and concerns.

The Ministry of the Solicitor General, specifically the Ontario Provincial Police, has found the severing process to be extremely difficult. Each phrase within a document must be carefully considered for severing, since the information contained therein may well provide an informed inquirer with information that may identify an informant, a complainant or a witness. There are too many times when only the informant and the bandit know the information and where we do not

know that it is restricted to two people. When that gets out, it could be very dangerous.

The concern is heightened by the fact that information about a certain event or individual in many instances will be held by several police forces. The same request for information made to several police forces, given the complexity of the severing process, will not result in exactly the same information being released in each case. Seemingly harmless phrases considered on their own may well be pieced together like parts of a jigsaw puzzle to reveal information that will interfere with the administration of justice or place the health or safety of a member of a police force or the public in jeopardy.

In addition, over a period the threat of being identified will result in members of the public becoming hesitant or unwilling to supply police with information necessary to institute prosecutions. Criminals will remain at large for a longer period of time and members of the public will continue to be unnecessarily victimized.

The philosophy of the act and the need for openness are not being challenged by this recommendation. Our committee has wrestled with this problem and has explored numerous operational alternatives, but none has been found to offer an acceptable level of protection.

So we say to you that we are vigorously opposed to severability as it pertains to the clauses in section 8, as I outlined earlier.

1640

MUNICIPAL POLICE AUTHORITIES

Ms Humphrey: Excuse me. I am losing my voice; that is making people happy.

By way of introduction, the Municipal Police Authorities, which was formed over 27 years ago, is the association comprised of Ontario's municipal boards of commissioners of police and police committees of council. The association is governed by a 20-person board of directors. John Whiteside, Windsor board, is the current president of the association and sends his apologies for being unable to attend today. I will be speaking on behalf of the association in my capacity as executive director.

The MPA has liaised with the Ontario Association of Chiefs of Police during the discussions relative to Bill 49. May we say at the outset that MPA fully supports the principles contained in Bill 49. We also wish to go on record as endorsing the position adopted by the Ontario Association of Chiefs of Police, and respectfully urge the standing committee on administration of justice to recommend the changes to the bill which have just been proposed. We would like to detail for the committee a particular concern in respect of some matters.

First and foremost, there is a need for a clear differentiation between the duties and responsibilities of the police governing authority and the chief of police in order to clearly reflect their different roles in the administration of policing services. Our major concern in this area involves section 3 of the bill, wherein the head of the institution must be designated. Section 31 of regulation 791/80 of the Police Act clearly prohibits any chief, constable or other police officer from taking or acting upon any order, direction or instruction of a member of a board or council. The board or police committee of council is required to act as a unit. This very fact might prevent the police governing authority from appointing from among themselves an individual to act as head of the institution for the purposes of this bill.

The alternative in Bill 49 would be to designate as the head the entire board or committee of council, or a committee of the board or council. While on the surface this may seem an ideal alternative, it will present a multitude of problems, the most important of which is accessibility. We understand that clause 20(1)(b) of the act does not allow for the extension of time limits for the purpose of consultations within an institution. Therefore, decisions could not be put off until the next meeting of the board or police committee.

Police governing authorities across Ontario convene, on average, once per month. The time schedules in the bill would make it difficult, if not impossible, for the governing authority to satisfy the requirements of the act. Further, should the board be the head of the institution for the purposes of Bill 49, individual members of the board would become privy to information in the operational files of the local police force to which they would not be otherwise required or entitled to have access for the proper performance of their function as a board.

In light of these facts, the Municipal Police Authorities encourages the committee to provide for two separate institutions, one being the police board or police committee of council, and the second being the police force, each with its own area of responsibility under the Police Act for policing services.

We understand that the government of Ontario is reluctant to provide for two separate institutions for policing for the purposes of Bill 49 as it feels that this exception would be followed by

similar requests from hospital or school boards, for example. We remind members of this committee that boards must not be able to access operational information from members of the police force, as the board is often called upon to sit in judgement of members in matters of discipline. To access such information would prevent a board from performing its quasi-judicial function, a function that, we understand, is not carried on by hospital or school boards.

The Municipal Police Authorities also wishes to emphasize the need for assuring appropriate safeguards to protect the physical safety and wellbeing of persons who have participated or assisted in investigations conducted by police and further reiterates the need for protecting the confidentiality of police procedures, the disclosure of which would assist the criminal element in avoiding detection and prosecution.

We thank you for the opportunity to provide input into these discussions. Our association, as we said at the outset, is in full support of the principles contained in Bill 49, and we believe that the changes requested by the Ontario Association of Chiefs of Police and the Municipal Police Authorities will do much to achieve the desired results.

Mr Edwards: Mr Chairman, if I may, we also thank you for the opportunity to be here this afternoon and have some input into these very important discussions. As Sandi has just said, we do believe in the principles of the legislation, but we also believe very strongly that the suggestions that we have made and the suggestions that the MPA have made will do much to achieve the desired results.

Being in the police business, we need the public very, very badly to be part of our business and if we do not have them we are going to fail in our policing responsibilities within this province. We need the public to participate with us; we cannot do it without them. We have our Crime Stoppers programs, we are involved in community-based policing. We also have the responsibility of looking after our complainants. And as Inspector Turnbull said earlier on, we believe it would be counterproductive to introduce legislation that has the appearance or the potential to raise apprehension about our ability to really maintain complete confidentiality of information supplied to us. Thank you very much, sir.

The Vice-Chair: Thank you very much for both of your presentations. I should indicate for the record that we have the Minister of Financial Institutions who has been sitting through both presentations and is taking–

Hon Mr Elston: In my capacity as chairman of the Management Board actually.

The Vice-Chair: Actually he is here in his capacity as chairman of Management Board, I understand. So he is listening. We do have some questions. Our first one is from Mr Kormos.

Mr Kormos: I have got to say that the minister was sitting attentively, and I was impressed.

The Vice-Chair: I am sorry, I should add, also, that I understand that the vote has been deferred, so we can continue with the presentations and the questions without further interruptions, hopefully.

Mr Kormos: I have a couple of questions, and one perhaps in response to the point that you make–and really maybe the drafters of the legislation did not intend for police forces to be included–that I find pretty persuasive, except for my concern about paragraph (c) under the definition of institution, which gives the government, by virtue of its regulatory powers, the power to throw anybody it wants into the hopper.

So your comments raise that really horrifying prospect. Let us conclude for the sake of argument that police forces were not intended to be part of it, along with any other number of bodies, but by regulation they can be thrown in. So that obviously warrants some attention as well because when we are considering the legislation we have to look at it in terms of who it is intended to encompass.

Appreciating what you are saying, when you look at section 1 of this bill and indeed the Freedom of Information and Protection of Privacy Act, 1987, there are two things: one is to provide access to the public; that is to say, a principle that people should, by and large, be required to lay their cards out on the table, and the other is the protection of privacy. Those are two apparently contradictory principles, except the second part of the protection of privacy of individuals along with the right of access to that information, presumably by those individuals.

So let us move from what you are talking about, and I appreciate reading the transcripts, for instance, from the United States; horrifying prospects there. What about the person who does not want to identify an informant, who does not want to identify the people who are complainants, who basically does not want to interfere with the police investigation, but let us say, and I could think of an illustration, the person who heard a rumour that he was listed on CPIC as violent and wants an opportunity to confirm that and then subsequently to refute that. Now that

does not deal with some third party, that is information about him or her.

How do you balance what you are saying, and as I say I understand from listening and I am hard pressed to argue with what you are talking about, against the right of the person who, let us say, is improperly listed on CPIC as violent, and you all know the impact and repercussions that can have in very subtle ways, who wants access to that information about himself or herself so that he or she can rectify the situation? Now what happens here? Assuming, once again, that the police are intended to be included by the legislation.

1650

Mr Garswood: In the first portion, it would come as quite a surprise to us if the police were not included, especially after having gone through and still participating in the consultation process. We have been associated with the deliberations about the act since the original Williams commission report almost a decade ago now, so that would come as a surprise to us. We do believe because of what is happening that we are contemplated to be included in the act; I do not think there is any doubt about that.

But as far as a person accessing his own information, and the scenario that you lay out and let's take it away from Canadian Police Information Centre because there are some other rules there, but let's say it is a record card held in the police force; that person then would have access to that information, based of course on whether there is an ongoing investigation in process or there is some intelligence information. But if that person wanted to access his own information, and let's keep it within those parameters, he could do so.

Mr Kormos: Okay, I hear that response but I obviously anticipate, if one buys what you argued in the first instance, some difficulties to be encountered. Let's say if the material that provided the input into the CPIC record, the material that was internal to the local police force, consistent with an occurrence report, then you are generating problems; the severance of other information and so on.

I guess what I am asking you is, do you think the police force, in view of what they do and how important their work is, should have special rules, that they should even be exempted from the principles of the legislation; appreciating that that would be a pretty gutsy thing to say, but is that what you are suggesting?

Mr Garswood: We are not asking to be excluded from the act. For want of a better term, this is housekeeping; this is safety that we are talking about. We do not have any problem with a person seeing his own file based on a few matters, and there should be some special considerations. We have people coming through the door every day and all our police forces asking for information about themselves and we are giving it to them. We are not hiding that stuff. We are much, much more open than we were years ago. We are having press conferences every day. As the chief as said, we need the public support and all that.

We are looking at the legislation on the aspect, and this as far as severing is concerned, on the safety aspect. We do not and you do not want to have legislation that is going to get somebody hurt, and we have cut this back since our original submissions years ago to the four issues that deal specifically with danger, and that is what it is. We are still going to continue to give information to the public. There is no problem there, but when we give it to them, we want to make sure they are not going to get hurt by it too.

The Vice Chair: Thank you, Mr Kormos. We have a number of people who have questions; Mr Sterling, then Mr Smith, then Mr McGuinty, then Mr Kanter.

Mr Sterling: First of all, I would like to say that it is nice to see Staff Inspector Garswood once again.

I think it is important for the committee to understand that the police community has supported this legislation before Bill 34 was here, before my Bill 80 was before the Legislature some time ago, and that the municipal police forces have never resisted freedom of information, much to the surprise of our Solicitor General and our Attorney General back in 1982 and 1983 when we were talking about freedom of information at the time.

My understanding at that time, staff inspector, was that the goal of the municipal police forces was that they did not want a whole bunch of different rules surrounding the sharing of information with the public for each and every municipality. In other words, they did not want to have municipal bylaws in Ottawa, Toronto and Hamilton because the sharing of police information is so important, and therefore, while you may have got a more favourable situation in one area over the other, it was important that they be coincident in terms of the exemptions and the general structure of it.

Therefore, when Bill 49 was drafted, I was happy to see that it was really in line with the existing provincial legislation. In that vein then, if we alter Bill 49 to allow more restriction in

terms of the severability area, or do not require severability in certain circumstances, do you not then have a problem in terms of dealing with some information if, for the sake of an example, people go to the Ontario Provincial Police for it versus going to the city of Toronto?

Mr Garswood: I think probably the expression "consistent approach" is what you alluded to when you said there should be one act. There are now really two acts and one is a mirror of the other. I am sure that the government in its wisdom would see that if it were going to do that for the municipally oriented act, it would also do that for the provincially oriented act.

Mr Sterling: I buy that.

The other problem you always have with severability is that if in fact there is a document and you allow the document to be exempted holus-bolus without any severability sections, then all the drafter of the document must do is mention a name, a source or whatever to in effect deep-six the document totally. Is there not something in terms of a severability section, which might be stricter than subsection 4(2), that would be acceptable to you.

Mr Garswood: Let me answer in this way: We still believe that severability should be exempt from those sections, but we have seen what can happen if we do not approach the disclosure of information properly. If we were to hide behind this exclusion in every case, we would most surely lose it. We would be very foolish to take overadvantage of it. What we want to do is make sure that it is applied to those cases where it is necessary and where there is a risk.

As I said earlier, there are a number of cases where we cannot be sure how many people know that information. I think that is a very clear example. Did only the informant and the bandit know? If there is a risk, exclude it. If we go to the other end and say that there is no risk, that we know where it came from, know the circumstances and how it was done, then all right, let's sever it. We could still do it.

Mr Sterling: Do you not believe that the definition of "intelligence information" in clause 8(1)(g) would permit the police basically just to close their filing drawers without considering giving any information?

Mr Garswood: No, I do not believe so. Inspector Turnbull has a comment on that.

Mr Turnbull: I do not believe so because everything is subject to appeal to the commissioner of this act. If we hide behind a blanket type of exclusion, then eventually it is going to be a matter appealed to the commissioner's office and we are going to lose that.

Mr Sterling: I certainly have some sympathy for your situation. If we are going to consider this seriously, I would like to hear what the experience has been in terms of the OPP in dealing with Bill 34, our existing act, because they have now gone the route for, I guess, a year and a half or two years. I think we might want to get somebody from the OPP.

1700

Hon Mr Elston: I have already set in motion inquiries with the commissioner's office as to the experience so far, to see about questions of appeals that may have come from decisions of the OPP. I have also asked the director if we are aware of the difficulties that are at issue, and so far we are not aware of them, but we will get that information together and bring it back. If we then think it is necessary to have a visit from the OPP, certainly I think that is well within the mandate.

I am really quite supportive of your concern, Mr Sterling, that we have consistency in the information that is available and where it is available, because as the presenters have indicated, that is a substantial part of police work, to make sure everybody is working on the same information level. It would be inappropriate if somehow somebody's shopping around was able to elicit information that could injure a force someplace else. I understand that.

Mr Sterling: I understand too that you are bringing a bill to the Legislature to amend the Freedom of Information and Protection of Privacy Act, and if in fact we agree with the submission, we could at that time amend this part of the act as well. I would be quite willing to look at that.

Mr D. W. Smith: After listening to your presentation–I do not know how to phrase this question but I am going to start and you can tell me whether it is right or wrong–in how many cases that have come before you and that you have had to investigate do you feel that if you had released any information on the persons you were dealing with, and if of either party you are expecting someone found out, it could have caused harm to someone in the future? Would all of your cases be like that or 50 per cent of your cases? I do not really know how to start this question, but that is what I am trying to ask.

Mr Garswood: Of course, we are not under the act yet. I was in an intelligence unit for 13 years. I know from what I saw cross my desk that

if some of that information and where it came from had been released, somebody would have lost his life. I can say that most sincerely to you and to everybody here.

If we were to take that up to the Metropolitan Toronto Police Force, you can imagine that in a city as vibrant as this one is, and with the amount of things that are going on, how that same risk escalates by a percentage. But clearly, not all our cases have that aspect. It is not the majority of them that have such sensitive information. Many mundane things, by comparison, are going on in a municipal police force every day, and even in the OPP, where the information is not sensitive, but there certainly is some that goes through there.

There is information given to us concerning a murder, how it came about and who said it. We ask for the co-operation of the public at all times, even more so as we are turning towards community-based policing and getting closer to the public. We want the public to feel assured that they can share what they know with us for the benefit of all, so that our streets are safe to walk down and our neighbourhoods are okay and stuff like that. There is clearly, as you would ask in your question, information that crosses our desk that is very sensitive and life-threatening. As to the percentages, it is hard to say.

Mr Sterling: There is evidence under oath in the United States that people have been killed because of the Freedom of Information Act.

Mr D. W. Smith: Do you want to make a comment as well, Mr Edwards?

Mr Edwards: Yes. I think we can go from one end of the spectrum to the other with that. What we have talked about now is a lot of intelligence information where life is a primary interest. Yet we can probably go right to your own neighbourhood and someone will want to phone the police and complain about a noisy party or a parking problem, but he does not want to be identified, sometimes for fear of repercussions from the neighbour, and sometimes because, "I just want to mind my own business, but...." In a lot of cases we have, people do not report things to us because they are afraid their neighbour is going to find out and that is at the other end of the spectrum.

Mr D. W. Smith: Leading from that, of the organizations, groups, bodies, whatever you want to refer to them as, that you are expected to exchange information with, how many of those would be asked to open up their files as to someone who asking you to open up under this legislation? Are any of these bodies required to do so? I come from a border community, so you could be cross-border or you could be international. I would not know all those you are expected to exchange information with, but do any of them have freedom of information on their files as we might be asking here?

Mr Garswood: Cross-border, of course, there is the federal Freedom of Information Act in the United States. It has certain limitations. I believe New York has some. I am just searching my memory. In the sharing among police forces, we would all have the same rules of course.

I should interject that when we talked about the consistent approach, we have been aware of this type of legislation for some time and we have taken it upon ourselves to institute a very vigorous program of training for all the police in Ontario—we are in that process now—so that we have a consistent approach and an awareness of the act, not only of what it says but of the spirit of the act as well.

In dealing with other ministries of the government and other nonpolice agencies, I think that situation would rise and fall or would escalate on the type of information and what rules they would have on their information. It is basically a hard question to answer.

Mr McGuinty: I do not rightly know that I understand everything you have said, gentlemen, and I have not had time to analyse this document, which I certainly will do.

As you may suspect, there are many issues that come before us at Queen's Park. On many of them, as a simple country boy, I am baffled, bewildered and confused. One of the areas I have tried to focus upon is police matters, partly perhaps as a result of some experience with the police—I will not say on which side of the law—and for personal reasons, because I have four sons having great difficulty with the law as lawyers.

Fresh in my mind are discussions about the civilian complaints review and the Lewis report. What I have seen is a great deal of sensitivity on the part of the police to the tendency towards incursions or perhaps intrusions by nonpolice into police affairs. I do not live in Toronto. From what I have seen of talk around Toronto, this seems to me to be kick your cop year.

You have civilian review bodies overlooking them. As you rightly say, you are dependent for your efficiency upon the co-operation of the public. No one is more concerned about cleaning up the Police Act than good policemen themselves. We have had charges of racism. Now they are dealing with police pursuits, the right of

police to draw firearms, hiring quotas, central hiring, lateral transfers and efforts to impose uniformity on all forces in the province in some aspects.

What I am trying to do is extract a principle from what you have said, and I think you said it in a very convincing way. The principle is that there are some areas that are more properly the concern of policemen by virtue of their professional training, experience and responsibility. On page 3, you refer to something that "authorizes a member, or members, of the board to review sensitive law enforcement information and determine its disclosure," and later on page 2 that "the final authority for the release of information held directly by the police force is an extension of this responsibility."

If I were to try to extract now, as I am trying desperately, a principle or a basic concern you gentlemen have, am I correct in saying that principle has to do with possible intrusions into areas in which policemen themselves, by virtue of experience, competence and integrity, are the ones best qualified to make judgements? Is that a correct interpretation of what you are saying?

1710

Mr Garswood: I will give you a "yes, but" on that.

Mr McGuinty: All right.

Mr Garswood: We all started off as civilians before we came on the police force. In a Royal Bank Newsletter almost 20 years ago, they wrote, "The police are the public put into uniform and given special laws"–very few of them under the Criminal Code.

We did go through the experience of being trained and understand the complexities of law enforcement. In latter years, especially in my career–and I have been a policeman for 32 years–I have seen the need and the wisdom for getting closer to the public. All of us are doing that now. So I would not want anybody to take my answer out of context, that the police are the only ones who know what is going on, because we are not the only ones who know what is going on and we work in concert now; if you have seen the logo on police cars, "Working Together" –that is truly the case.

But there are some things because of our experience–and we are associated with the law, as lawyers and judges are–that we do become experienced in. Those are the aspects of law enforcement and protecting the lives of people and protecting and upholding the safety of the community. We do not do it alone, but it is our principal job.

Mr Edwards: Policing has come along way, even in the last 10 years, and we have no intention of abusing our powers. We know we have to work with everybody to get proper legislation so that we can work within it. As John was saying, we do not want to say that we are the experts and that nobody else is, because that is not true, but we do require the flexibility to deal with the law and use some of our expertise to do so.

Mr McGuinty: I certainly appreciate your answers. Please forgive me; I did not mean to imply that police are looking for a situation wherein they are not accountable. I know that you are; you must work in concert with the people at large. My point is simply that I have seen examples, which from my lay perspective and in talking with very good friends with great experience on a number of police forces, they have shown some concern that in some particular areas in which you gentlemen are, by virtue of your profession, most competent, others would seek to intrude. That does not deny the necessity and propriety of having the involvement of others as well. I appreciate your answer.

Ms Humphrey: Prior to joining the municipal police authorities as executive director, I spent seven years in association work in the construction industry. I went into policing knowing absolutely nothing about policing. I will be honest with you, I did not know what the municipal police authority really was and did not understand what police commissioners or committees were responsible for, and there I was.

After two years of reflection, we established a long-range planning committee, and one of the major objectives in our long-range plan, which the minister and the Deputy Solicitor General have now seen, is an extensive public education program so that individuals understand what police commissioners are. I guarantee you that if you ask the man on the street what a police commissioner is, the responses would include "a senior police member of the force." They just have no idea; no one understands.

In my opinion, they would be better known as the civilian governors of the Metropolitan Toronto Police Force, because that is exactly what they are. There is no public knowledge whatsoever that in fact the board of commissioners of police are not members of the force but are in fact the civilian representatives of every citizen within the community. That is the message our association will be working hard with the ministry to get out in the future. I just

thought I would say that because I thought it was kind of going in the same vein you were going in.

Mr McGuinty: I appreciate that.

Mr Kanter: I would like to pursue the matter of the police-community relationship. We have had some information, I think some fairly compelling information, about the problems involved where information that the police have could cause difficulty or harm to people if it were disclosed.

It just happens by coincidence that I was in a meeting in my riding on Saturday where some constituents of mine were concerned that a lack of information from the police to them might cause them harm. I will be specific. It was in the area of sexual assault. It did not involve any of the two or three police forces represented here, but I am sure the situation occurs in other jurisdictions. Basically, their concern was that when a suspect has been identified by the police, people in the community feel they have difficulty in getting a description.

As I understand this legislation, under subsection 8(1), they would not have the right to that information. I presume it would be a law enforcement matter. Perhaps you can help me just in a general sense.

You say you want information from the community; you want people from the community to share information with you. How do you respond to community representatives who, in the case of sexual assault in a neighbourhood, say they should have a right to information about a suspect? Is there a right or a policy? How do you respond to people who express the concern that the police want information from them but are not as eager to share the information they have back with the community?

Mr Garswood: I do not think it is a lack of eagerness to share it. Let me take you a little bit inside of a unit that might be investigating sexual assaults and so on. Probably there is nothing they would like more than to publish and give out to the community the name of the suspect, but to do that is an infringement upon that person's rights. If he has not been convicted, he is only a suspect and our information about him may be limited; it may have flaws in it and things like that. We would be sued from here to there if we tried that.

Of course, there are operational ways around that. We can publish the description and things like that, and we should do that for protection. That is an awareness thing and the police and the community working together. We are getting better at that. There are a lot of things in those areas we would like to say, but we have been taught and trained and experience has told us, "This is how far we can legally go."

In all of this we have the Criminal Code to contend with and some restrictions. We have to take this case to a successful conclusion in court, with a crown attorney representing us, and the information must be right. You have all heard stories about the taking of statements and how wildly they can go from one end to the other, especially when you look at things that may have happened in the United States, where there were beatings in the past and things like that.

Policemen have a great number of rules they have to abide by if they want to get that case successfully through court. Those are things that we have in our minds when sometimes we cannot do what we would like to do when we know something. We will get better at it and so will the law, and it will help to make the community safer.

Mr Edwards: I will keep it in mind, Mr Kanter, that our primary responsibility is the safety and protection of the public. If we have a description of a suspect without a name, in my personal view we are obligated to put that description on the street, as long as we are not making a mountain out of a molehill or creating a situation that is worse than the one that has already been created, keeping in mind that our primary interest and responsibility is the safety and protection of the public. If it means losing a case in court, still the public should be informed. We cannot name names, of course, unless we have a warrant issued for an individual.

Mr Kanter: I am just trying to understand general policy, because on occasion I have seen information on television or in the newspapers describing a suspect, but I have not noticed whether or not it was by name. You are saying there is a general police policy that such information is generally available, but as I understand it, there would not be a right to that information under this legislation.

Mr Turnbull: If I might comment on that, I do not see anything in this legislation that prevents us from putting a description of a suspect out to the media; there is nothing here that would interfere with that process. I agree with what Inspector Garswood suggested; that if we have a suspect's name and we are working on trying to gather enough evidence to lay a charge, then we could not name the suspect in the media until such time as we lay a charge. And if we lay a charge and we cannot successfully arrest that individual, then we would issue a warrant for his arrest. There is nothing in this legislation that

would prevent us from publicizing the fact that we have issued a warrant for that individual.

Mr Kanter: As I understand it, there would be nothing to prevent you from doing it, nor would there be anything to compel you to do it.

Mr Turnbull: No, not in this legislation. I think each case is weighed up by the investigators and their administrative staff. If there is a suspect description given to us and we have narrowed down our investigation to hone in on perhaps one or two individuals whom we strongly think are involved, we may not go public with the description because we may feel that may have a detrimental effect on our ability to gather further evidence. So there is a sort of a weighing factor: the protection of the community at large and the successful prosecution of the case that is under investigation.

The Vice-Chair: Thank you, Mr Kanter. I would like to thank Police Chief David Edwards, Staff Inspector John Garswood and Inspector Barry Turnbull from the Ontario Association of Chiefs of Police, and Sandi Humphrey from the Municipal Police Authorities for their presentations today.

Miss Nicholas: Has anything had been discussed about the city of Scarborough letter?

The Vice-Chair: The city of Scarborough has been advised by our clerk that two extra days of hearings have been added to the committee agenda.

Miss Nicholas: Great. I just saw the letter.

The Vice-Chair: Good. This committee stands adjourned until Monday, 20 November 1989 at 3:30.

The committee adjourned at 1722.

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From the Municipal Police Authorities:
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Ontario

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Standing Committee on Administration of Justice

Gun Replica Sale Prohibition Act, 1989

Second Session, 34th Parliament

Monday 20 November 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 20 November 1989

The committee met at 1538 in room 228.

GUN REPLICA SALE PROHIBITION ACT, 1989

Consideration of Bill 145, An Act to Prohibit the Sale of Gun Replicas.

The Vice-Chair: I call this meeting of the standing committee on administration of justice to order.

Today the agenda will be dealing with Bill 145, An Act to Prohibit the Sale of Gun Replicas. The member who introduced the bill is Mr Farnan and we will give him 20 minutes or whatever time he requires less than that for an opening statement.

1540

Mr Farnan: First of all, I appreciate the fact that we finally have gotten to public hearings on Bill 145. The purpose of the bill is to prohibit the sale of replica guns or guns that reasonably might be mistaken for real guns in the commission of a crime.

It has been a long time coming and I am hoping that today is a significant step forward. We go back to October 1987, to the Brantford incident of a man who was killed when brandishing a replica gun, who was shot by a police officer. Short days after that, the Attorney General (Mr Scott) said he would consider the recommendation of the coroner's jury to ban replica guns. It has now been two years since the Attorney General suggested that he would consider taking this action. It is my hope that the government of Ontario will be proactive rather than reactive, but already I am afraid we are finding ourselves in the position of being reactive.

There are numerous incidents in my own community. In the city of Cambridge a woman officer drew her revolver in a similar incident in a public forum when a young man was brandishing a replica gun and the potential for tragedy was very much there. Fortunately, it did not occur.

We have had incidents where the tactical squad has been called out in Peel. We had the incident of the young man crossing the Canadian-American border who was shot and killed. There are just innumerable incidences and the United States experience is such that I believe there were something like 13 fatalities as a result of these guns. The popular television series, Hill Street Blues, ran what was to be an educational segment on the danger of replica guns.

I am particularly concerned about police officers. Police officers are put in the untenable situation of having to face these replica guns, or guns that can be reasonably mistaken for real guns, and they have to make split-second decisions. They have to make life-and-death decisions. A fraction of a second could mean the death of the officer himself or herself if the gun he or she is facing happens to be real. Police officers do not have the luxury of going through mental gymnastics as to whether they are facing a real gun or a replica gun. Obviously they have to take what is the appropriate action of their training and their experience and their judgement at any given moment of time.

A word in terms of the manner in which this bill has been drafted. The Attorney General is, I think, looking to this as a federal issue. Perhaps that explains the lack of initiative on the part of the province. But the province does have real powers. That is why, in drafting the bill, it comes under the Ministry of Consumer and Commercial Relations. We do have the power to control the sale of replica guns.

The city of Toronto recently passed a bylaw that covered manufacture, distribution, sale and possession, a much broader piece of legislation and I want to commend the city of Toronto for its initiative.

I chose the sale of guns because it is clearly under our control. Basically a lot of the manufacture of replica guns takes place offshore and we do not have control, but if we are not permitting the sale of guns, it certainly would be an inducement not to manufacture them.

I am open very much in terms of coming to this committee with what is basically a vital issue in our society, being open to this committee and to the delegations, that we listen carefully to the delegations and be flexible in our response. I am certainly open to amendments that would broaden the application of this bill.

It is interesting that more than 50 police commissions in the province of Ontario have passed motions in support of the bill. Something like 16 police brotherhoods or police associations have passed resolutions in support. Every police

officer with whom I have spoken indicated support. Neighbourhood groups, parent associations, have indicated support. The Association of Municipalities of Ontario, representing all of the municipalities, passed a motion of support, as did innumerable other municipalities. There is very wide support for some form of legislation to be drafted to address the problem that this bill attempts to address.

One police commission actually reserved support for the bill because its members did say they would like to see it embrace manufacture as well as sales. However, my belief is that that police commission in Waterloo is supportive of the bill, and certainly the Waterloo Regional Police Association and the officers are.

I think we are, to some extent, sitting on a time bomb. There are going to be other incidences of the use of the replica gun and the gun that can be as easily mistaken as a replica gun. I have a collection of these guns, which I picked up in department stores for between $3 and $6, and they are very easily mistaken for a real gun. But certainly, there are going to be incidents. There are going to be fatalities. There are going to be police officers who for the rest of their lives are going to question the results of what was probably a proper action on their part, but then the horrific discovery after the fact that, in fact, they were facing a replica.

The testimony given at the Brantford inquiry is very compelling. One of the police officers had this to say, "I thought I was going to get shot. I was scared to death." Two officers had been sent to the scene of the crime and the second officer said, "I was really scared because I did not know which gun had gone off first." That is how realistic the situation is.

Some people have suggested to me that we may indeed be taking away children's toys. I go back to our own childhood. I think we remember the days when we took our mother's broom, put it between our legs and ran around the kitchen, and that was a horse. We had a piece of wood or a finger and that was the gun, and we played cowboys and Indians. There was a certain role for the imagination in which children's imagination could have some free play.

1550

I do not think we have to have absolutely realistic guns so children can experience play. It is probably a sad reflection on our society to some extent, but I suppose children model themselves after what they see on television; and there are going to be games of cops and robbers played by children, but we do not have to put into the hands of those children what can be perceived as realistic guns.

In the incident on Hill Street Blues, in a very realistic re-enactment of what would be a potentially real-life situation, we have the officer shooting a young child in a set of circumstances in which the officer is faced with what appears to be a real gun.

I am looking forward to the delegations that are appearing before us. I thank them for taking the time and trouble to come forward to speak, whether in support of or in opposition to the bill. I think whatever any of the delegations have to say will be helpful. There are bound to be areas or things that we have not thought of and suggestions that might bring change.

For myself, I see a real need for the legislation. It may be that there is room for some areas that make good common sense, such as amendments to the legislation, but my underlying fear is that we will procrastinate. I hope this committee will hear the delegations, go through the clause-by-clause process and that the government will take action. I certainly would hope that we will not be looking at a two-year delay between these committee hearings and some form of legislation coming into the House, as there has been between the Brantford shooting and these hearings.

That basically would be my opening statement, and I am looking forward to hearing the delegations.

The Vice-Chair: We have six minutes left before our first presenters. If members of the other two parties wish to say something, I will allocate three minutes each.

Mr McGuinty: Thank you, Mr Farnan, for the background. The thing that really intrigues me is the distinction between a bona fide replica, and a toy gun that is not a gun replica. Then the minister would be asked whether he believes on reasonable grounds that the toy gun is a gun replica. My mind is easily baffled, and it is really baffled at this predicament of the standards, grounds and criteria whereby this distinction can be made. Could we visualize some little waifs playing in the playground and being accosted by a person asking them if they have a licence for the little piece they have on one of their hips? I honestly do not know how that distinction can be made.

Beauty is in the eye of the beholder and replica or toy is in the eye of the perceiver. A policeman meets somebody in a dark alley and what on the desk of the minister might appear to be a harmless water pistol, in the anxiety of the

moment, the tension and so forth of the encounter, becomes not a toy gun or a replica, but a real piece.

I find it very difficult to understand how that distinction can be made and what we are getting into here. Could it lead invariably to all toy guns being registered?

Mr Farnan: Can I answer that question?

The Vice-Chair: No, this is just opening statements, unfortunately. We will not use this opportunity for questions and comments or answers. We will have that later.

Mr McGuinty: I am sorry?

The Vice-Chair: We are just making a few opening statements. Mr Farnan left a few minutes prior to the first presenters so I am giving the other parties the opportunity to make any statements they wish to.

Mr McGuinty: Do you want me to phrase that as an observation then, rather than a question?

The Vice-Chair: That is right.

Mr McGuinty: I will leave that to my colleague. I think he can rephrase mentally a statement to the effect of how the minister makes his decision and the possible predicament he might get into.

Mr Kormos: Following through on what Mr McGuinty said, yes, it is sad legislation. It is not an enviable society that has to consider legislation like this. Quite right, my perception of one of the effects or impacts of this is, yes, the presence of those oh so realistic toy guns that kids and all of us probably played with as youngsters. This legislation may well have the effect of saying, no, they are going to have to look at options, be it the imagination, as Mr Farnan speaks of, or other actual objects.

It is frightening legislation, and it is frightening because what it does is recognize the prevalence of violence and the violent use of weapons in a society and the violent use of replicas of weapons. In that respect, as I say, we are not to be envied for having to consider it.

It requires, in my view, bold perspectives. I notice the Orangeville police force refer to it as commonsense legislation. Well, that it is. Guns are for discharging bullets. They are for shooting animals or people. When indeed a society and its criminal element utilizes them as frequently as they have been utilized in the past, not just real guns but replicas as well, then it is time for the courage that I say Mr Farnan has displayed in being prepared to take the bull by the horns and indeed wrestle it to the ground. He has been quite candid in saying that he welcomes discussion and debate and perhaps amendments to the legislation. Perhaps it needs fine-tuning.

But it is something that I am trusting we will hear. It is a piece of legislation that is desperately needed by virtue of the circumstances. We should all hope and pray for a society wherein a Legislature could consider rescinding this type of legislation but that is not the case right now. That is not the reality of things. It is a sad, sad day but that is the state that we have arrived at.

Mr McClelland: Very briefly, I just want to say at the outset that, although I am not personally disposed to the use of firearms, I think that there is arguably a legitimate use for them in our communities. One could argue that for sports people and on target ranges and so on and so forth, in that sense they are legitimate. I think the spirit of what Mr Farnan has tried to incorporate in his Bill 145 is to be applauded.

I certainly could not add much to his comment that he very forthrightly said, that there is perhaps room for improvement. I suppose that anything crafted by any one of us has room for improvement. His acknowledgement of that at the outset sort of sets the spirit for what I hope will be a worthwhile deliberation this afternoon. I feel very comfortable in supporting the spirit and where we are going with this. I can only add to the comments already made that if we can move towards improving it, so be it. Let's begin to deal with a very serious problem.

From the perspective of law enforcement, I think that those who serve in that capacity have at the best of times a difficult job, and anything that can be done to make their job somewhat easier and to remove even a small nuisance–sometimes much more than a nuisance as a very grave situation that results–if we can work towards helping in that situation, I can support it wholeheartedly and look forward, as has been said, to the people who will be submitting suggestions to us on how we might improve this. Certainly in terms of the spirit, the concept and the rationale for it, I am in absolute accord.

On that note, I look forward to the presentations that will be forthcoming.

1600

The Vice-Chair: Before calling the first presenters, I think it is appropriate that I use the chairman's prerogative and relate to the committee a little incident that was told to me by a staff inspector from the Metropolitan Toronto Police Force about a month ago.

This was an incident that occurred late at night. Foot patrols were out patrolling a particular area of this city. They came across a situation

where an individual had another lad pinned to the ground and was brandishing a gun at him. The foot patrol officers were obviously easily identifiable by their uniforms but yelled out to the individual to put his gun down.

Rather than putting the gun down, the individual aimed it at the police officers. My understanding is that in that type of situation the police officers have–I do not know whether they have orders or whether they have instructions or whether the procedure is that they fire. In fact, they did fire at the individual who was pointing the gun at them. Fortunately, the shot missed. The individual later put the gun down and he was arrested. It was discovered that he was 16 years old and had a replica gun.

I shudder to think what would have happened if the police officer's bullet had hit its target. I agree, as a personal view, with the intent of this legislation or the principles behind it. I hope that the committee can perhaps fine-tune the bill to have it reflect more accurately what we as committee members believe.

Mr McClelland: I will be brief. I just want to add a comment in light of a statement made by Mr Farnan in his opening comments. He indicated that there was a desire by the Attorney General's office of Ontario that this be dealt with on a more comprehensive, national level. Let me just say that I think that any one of us would be naïve to think that the passage of this legislation would deal with the problem.

There will always be incidents, there will always be unfortunate circumstances such as the one you just related, and we hope this will be a step towards beginning to provide some tools to deal with it on a broader base.

The Vice-Chair: Our first presenters this afternoon are from the Municipal Police Authorities. I invite Judge Ward Allen and Sandi Humphrey to come before us.

Welcome, Miss Humphrey. Judge Allen, welcome. We have allocated 30 minutes for your presentation. As Miss Humphrey is well aware, you can choose to use all of that 30 minutes for your presentation or you may wish to use less than the 30 minutes, in which case we will have some time for committee members to ask some questions. The time is yours.

MUNICIPAL POLICE AUTHORITIES

Judge Allen: Thank you for this opportunity of appearing before you. As you will probably recognize from the brief that has been presented to you on behalf of MPA, we shall not use the full 30 minutes but we do stand ready to discuss the matter further with you. I do plan to make some impromptu comments when I have completed reading the brief which Miss Humphrey has prepared for us.

For the information of the members of this committee, MPA, the Municipal Police Authorities, is the association comprised of Ontario police commissions and police committees of council responsible for the general administration of all municipal police forces in Ontario with one or two exceptions. The association was formed in 1962. We provide services and activities to assist members of municipal police-governing authorities in discharging their duties with the highest degree of professionalism.

MPA is also charged with the responsibility, which it fulfils, of liaison with the Ministry of the Solicitor General on matters relating to policing services and acts as the voice for police-governing authorities in Ontario on legislative matters, which is the capacity in which we are here.

The present issue relating to the sale of replica guns that might be mistaken for real guns in the commission of a crime has been the subject of discussion by the board of directors and the membership of MPA for some time. Some of the incidents that have been brought to our attention have been mentioned in the discussions already today.

At a coroner's inquest, as Mr Farnan indicated, investigating the tragic death in October 1987 of Hubert Corbett of Brantford, Ontario, it was ascertained that Mr Corbett was shot by a police officer who believed his life was threatened when Mr Corbett pointed an extremely realistic replica revolver at him. The coroner's jury, in that instance, recommended that the manufacture and sale of realistic gun replicas be prohibited in the province of Ontario.

The matter was then brought to the attention of MPA by the Board of Commissioners of Police of the City of Brantford, who encouraged the association to press for legislation as recommended by that coroner's jury. At the May 1988 annual general meeting of MPA, the following resolution received unanimous approval–and lest you are concerned about the apparent time lag, MPA's general membership meets only twice a year: once in May and once in October. That six-month lapse does not indicate a lack of interest. It is just that we can bring our membership together only on those occasions. The resolution, passed unanimously, was:

"Whereas the report of Coroner R. Bruce Penton, MD, MCFP, dated 23 October 1987, of

the inquest held in October 1987 into the death of Mr Hubert Corbett was received, be it resolved that the membership of the Municipal Police Authorities endorses the recommendation of the coroner's jury that replica hand guns be prohibited from manufacture or sale in Ontario."

The introduction of Bill 145 in May of 1988 was communicated to the members of our association. Resolutions from police commissions and police committees in Ontario in support of the bill were forwarded to our association and to Mr Farnan. We are also aware that many of our member police-governing authorities have communicated directly with the clerk of this committee with reference to this issue.

Police-governing authorities in Ontario have demonstrated overwhelming support for this bill, and we encourage this committee to provide unanimous support and push for third reading.

That is the end of the written brief, but I just want, if I may, Mr Chairman, to express some comments arising from my observations today.

MPA, I am sure, endorses the view and the principle put forward by Mr Farnan that delay could lead to the possibility of further tragedies, such as we have heard about today. We would urge you to get on with the enactment of this legislation. It may have some of the technical flaws that Mr McGuinty has spoken of, but I think they are flaws of not going far enough perhaps, and the tidying up can be done later. I certainly share the philosophy that Mr Farnan expresses, that delay could be very expensive in the way of human life and tragedy.

Like Mr McGuinty, I may have some concerns about the draftsmanship, but I think it is only a minor sort of technical control. I think I might also, as an individual, have concerns that the bill does not go far enough. It deals with sale and manufacture, but sometimes there may constitutional issues here that Mr Farnan knows about that I do not. Perhaps the committee in its examination of the issue might consider outlawing the possession of weapons of this sort.

I invite you all to take a look at the assembly of replica weapons that Mr Farnan speaks of. If it has any of the sort of things that I have seen in courtrooms in various trials, you will be amazed at the apparent authenticity of these instruments, and I pity the poor police officer who is confronted with one of them in a tense situation and has to make a decision. My heart goes out to him.

The Vice-Chair: Thank you, Judge Allen. Was that the presentation? We have some questions from committee members. The first one is Mr Smith.

1610

Mr D. W. Smith: I know this is a very sensitive issue. I do not really know whether I am going to ask a question that sounds like I am a hard-nosed character or what, but if we were to go as far as you might like and ban almost the ownership of all guns, would you feel then that maybe the police would not have to carry guns in the alternative? If we were to ban them all, then would police forces really not need them? What is your thinking along those lines?

Judge Allen: I do not think we will ever get to that idealistic situation, because despite gun control legislation, there are people in this country who are going to have guns illegally. I think we all know that. The outright banning of possession of this sort of thing might be going too far. Maybe they should be dealt with. I recognize that Metropolitan Toronto's recent bill makes exceptions, that persons can possess this sort of instrument in connection with theatrical and similar productions. But maybe if there were even just a control such as we have in the present gun control–these things have to be registered so we know where they are and why people have them.

I think Mr Farnan is right. I am a lot older than he, but I did the same sort of thing; I rode around on a broomstick and I pushed this, that and the other thing: bang, bang, bang. It had all sorts of effect. Now I appreciate that television and so on has come since my day as a child and kids are seeing a lot of violence. I think it is leading to more violence on our streets. I think that anything we can do to tone it down will help, and I am more concerned about the accidents that these things cause.

Mr D. W. Smith: I do not want to minimize the problem, but I was born in the era of the Second World War, so I heard about guns all the time, I suppose. As a kid, I had cap guns and then when I got a little older, I had BB guns, but I do not want, as a part of society, to get to the point where we are so alarmed–I will use the analogy that people are killed almost every day of the year on our highways; not every day of the year, I guess. There are a lot of deaths on the highways, yet cars still drive down the highway.

So to me, I do not want to go so far that we just almost stop everything, because it seems to me that as you watch television, again, when you see the countries where people have no guns at all, there is total oppression there. I do not think we are close to that by any stretch of the imagination

–I do not want you to get me wrong–but I do not want to get carried away to the point of not having some guns around as well. That is why I asked if the police felt that if we got such a controlled bill before us, or the feds may have to get such a controlled bill, then the police would feel comfortable in going without firearms.

Judge Allen: I will not speak for the individual police officer, but I think you are dreaming if you think that legislation of any sort will get to that state. Even the British, who for so many years went without guns for their officers, are finding they have to have those weapons available.

Mr Kormos: I am going to be asking as many of the other delegations probably this same question one way or another. The focus by everybody has been the tragic situation of a police officer mistaking a toy gun for a real gun. Hell, a police officer can be confronted by an unloaded real gun and his situation is no less or no more unsympathetic. The situation does not change.

On the other hand, he can be confronted by a gun, and surely you have heard this explanation given more than a few times, "I know it was a real gun, and darn it, I even know it was loaded, but trust me, judge, I never had no intention of ever firing it." Any criminal worth his salt who is picked up for, let's say, a robbery, or any other crime where a gun was alleged to have been used, is smart enough to have ditched it before the cops got to him. That ends up inevitably being a toy gun unless he is a dumb criminal and is not familiar with the sections of the Criminal Code that create consecutive sentences for use of a firearm.

Is there something lacking in the code which creates an offence with a minimum one-year consecutive penalty for using a firearm in the commission of an offence when the definition of "firearm" at that stage only includes a real firearm? That is number one.

As I say, the focus has been on the tragic situation of a police officer being confronted by somebody with a toy gun. Can you talk about the use of toy guns in the course of committing crimes, if only anecdotally from your experience on the bench? I think that is a facet of it that is not addressed by what we have been speaking of so far in the jury's recommendation.

Judge Allen: As you have mentioned, the use of a firearm in the commission of an indictable offence adds at least one year consecutive to the sentence. Just off the top of my head, I am not sure–the code does have various definitions of what are firearms. I am not sure whether an imitation would do it or not.

I can tell you that I hear oftentimes from bank tellers and employees or store cashiers who have been robbed that they do not much care whether it is a real gun or not. If it looks like a real one, they are very badly damaged and scarred by it. I heard of one instance where a teller in a bank had been held up twice. She quit her job. She just was not able to take it any more. That seems to be really an operating and functional weapon.

From the point of view that we are talking about today, with a lot of those things, you could not tell until you looked very, very carefully at them. I have had them produced as exhibits in court. They have the weight and the heft of the real product. They are not just a light piece of plastic. They are weighted in some way and they have certainly the appearance, the colouring, the pebbling on the grip and things of that sort to give them a very real appearance. I do not think any of us around this table could distinguish some of these from the real thing at the distance that perhaps Mr Farnan and I are apart, or even shorter distances.

I do not know that I have really dealt with your question, Mr Kormos.

Mr Kormos: I wonder if I could readdress that, this business of the code neglecting to include, in the offence of using a firearm in the commission of an indictable offence, a toy firearm.

Judge Allen: Perhaps that could be corresponding legislation, and it has to come out of the federal House. That is the answer.

Mr Kormos: I appreciate that.

Judge Allen: Certainly that would be very helpful from my point of view. It addresses part of the problem from the criminal use of it.

Mr Kormos: There has been some comment, particularly by Mr Smith, about the impact of this on the community. I suppose what it means is that little kids will not be able to play with realistic-looking toy firearms. Quite frankly, who in their right mind would want their kids to be playing with realistic toy firearms?

I know I do not have to remind some of the people that the government of Ontario, in a different era, commissioned Judy LaMarsh some time ago to do a rather thorough study of violence in the media and its impact, particularly upon young people. Mind you, any of us who watch television on a regular basis, and most of us do, at least on Saturday mornings–there are the obvious conclusions, but they had eluded us for so

long. Are you concerned about the fact that your kids, perhaps grandkids now, will not be entitled to play with the sort of cap guns and six-gun type of revolver toys that Mr Smith clearly played with when he was young and that I confess I played with too when I was young?

Judge Allen: So did I.

Mr Kormos: Does that bother you? That is going to be some of the fallout from this legislation, as I see it.

Judge Allen: It does not bother me. I think children, and in my instance, grandchildren, have more than enough other styles of toys to play with. There is no need for guns in their play.

1620

Mr Kormos: Just one more observation. I am hoping this delegation can perhaps comment on it.

As we all know, guns are designed to hurt or kill people or animals; that is it. I have no qualms about gun enthusiasts using guns. Collectors, enthusiasts and shooters are not the people we are concerned about. These are people who are often well trained and well skilled and they take pride in their ability to regulate themselves. Quite frankly, a kid, in my view, should know that a firearm is exactly what it appears to be: It is something that is going to hurt or kill an animal or another person. There is perhaps something inherently dangerous in teaching kids or letting kids acknowledge weaponry, or what appears to be weaponry, as mere playthings or toys. This somehow evades the reality of the impact that a firearm can have when it is a real firearm and when we are talking about real victims. I wonder if I have said that articulately enough for you to comment on that facet of it as well.

Judge Allen: As I say, I am not concerned about children being deprived of these. Bear in mind that with reference to the real gun, our gun control legislation makes provision for the gun collector. He can be licensed; he is permitted to have that, under proper storage arrangements. He is permitted, on proper arrangement, to move weapons from one place to another, but he cannot just holus-bolus slip it into his pocket and walk down the street to go to a Saturday night party with it. If there be people who want to assemble a collection of imitation weaponry in the same way as they assemble collections of miniature automobiles, all right, maybe that can be permitted. But if, again, there can be a control situation on it so that they are properly secured, you get over that without interfering with the right to do as one pleases, which is being infringed more and more, and I think properly so, in some respects.

The Vice-Chair: Thank you, Mr Kormos.

Mr Kormos: The chairman, when he said "Thank you, Mr Kormos," was implying that I had exhausted my time. Thank you, Mr Chairman.

Mr McClelland: Very briefly, Judge Allen, you mentioned one aspect of the bill that you felt might be improved upon and that was with respect to inclusion of possession. Although I have not attended this committee in the past, I have been a member. I notice that the Municipal Police Authorities often have a fairly extensive list of additional recommendations. You mentioned that you felt there was some room for improvement.

My question simply is, in addition to or as well as the one that you have specified, are there other additions and/or amendments that you feel ought to be considered?

Judge Allen: No more that come to my mind.

Ms Humphrey: This is Sandi's copout here, but there has not been a tremendous amount of time for the MPA to prepare for this presentation, as there should be, in light of a lot of other high-profile issues that we are dealing with right now in terms of race relations and other matters.

It is unfortunate–Metropolitan Toronto had planned to come here. The police force had planned to come today and had intended to bring some replicas and other displays for you to look at. Again, it was a time problem and they are not here. In addition, you will not be hearing from the chiefs of police, who are aware that we are here today and echo the same comments and have sent letters of support from the forces, along with commissions, to Mr Farnan in this regard.

Unfortunately, there just has not been the time to really go through it clause by clause, but I like the fact that you have noticed that MPA does usually recommend things when it makes a presentation.

Miss Nicholas: I just wanted to get on the record, initially, to give my support for prohibition or control of replica guns. I did not have the opportunity to do that in the last six minutes, after Mr Farnan, and I thought you would let me do that now. But I am still going to ask my question.

I want to say also that the concern I guess I have about the bill, and I think it is one we can talk about a little later, is in terms of licensing and issuing a certificate where a gun looks like a replica, or may be a toy gun, and we issue a certificate that it is not a replica.

I am really grappling with this whole issue of when a gun is a replica and when it is just a water pistol and would not ever be perceived to be a replica. I would have appreciated your bringing your bag of goodies today, because I think I would have liked to have seen them. I have never really actually seen a good replica. I guess I frequent some different stores. I just know that even with a Nintendo game, you have that little gun you use to shoot the ducks and the game or something. Would that be considered a replica under your bill?

These are things that are just my little concerns, where we draw the line. If we are going to give someone the authority to issue something, to issue a certificate that says a gun is not a replica, then what happens if that in fact is ever used in a confrontation and perceived to be a real gun? Who is going to make this magic decision when it is a replica and when it is not? I know I would not want to make that decision, because one day it might be used and someone might interpret it in a dark alley as it being a gun. I just wanted to get that on the record. It is something I feel we can work on.

The other thing is that I am just looking at the Metropolitan Toronto bylaw, the one I have in front of me. I am sure you have seen it, have you? Anyway, I am going to ask a fairly general question about it. It exempts firearms or replicas that are used lawfully for motion pictures, television, stage productions, historical displays, that type of thing. I would be interested in what your reaction to their bylaw is, because it might help us improve Mr Farnan's bill, if it can be improved. What is your reaction to that? I have a concern just with that. How would we know who we are to sell these replica guns to? Here it is permitting replica guns to be sold for these purposes, but how would a seller of these guns determine that they were being used for theatrical use?

Second, that means we are making replica guns. I find that once you make something, it becomes more readily available than if you just outright banned the production or manufacture of replica guns or anything that resembled a gun. I am sort of interested in your response to their exclusion or exception, because Mr Farnan has not, to the best of my knowledge, put such an exception in his bill.

Judge Allen: I think it would be my function to respond to that. It may be that Toronto, by reason of the magnitude of the film and television industry, sees a need for this sort of exemption within Metropolitan Toronto. If that be the wish of the committee and the Legislature, certainly there can be controls put upon it in the same sort of vein that I spoke of earlier. Handguns, the real thing, are not entirely banned now, but they are licensed and controlled, registered, catalogued, and limitations are placed upon the way in which they can be handled.

To get back to Mr Smith's reference to toys in the hands of children, maybe we are going to have to step on some little toes in that regard to stop the bigger toes from misusing these toys, because they can be frightening.

Ms Humphrey: Maybe just to expand a little further, when I was going through this and preparing this material, I noted not only in the Metropolitan Toronto bylaw but also in, I believe it is the city of Los Angeles, the same exemption in terms of the filming industry, etc. I called a friend who is in that very business and asked what type of limitations this particular bill would pose to that industry. His comment was, "If they cannot be sold here in Ontario, we will buy them where they are able to be manufactured."

He then indicated that on a set for a television show or a movie, etc–he gave his example, he is on a series for CBC–that all of those, be they replicas or real guns, are in a safe, and it requires two individuals to access them at any given time.

There is tight control on the material that is used in the film industry, but I believe in the Los Angeles bylaw it goes a little bit further and it allows the film industry itself to manufacture or to arrange for manufacture of its own directly with a source.

1630

Miss Nicholas: My question just came from–and maybe it is not a good analogy, but I remember when we outlawed fuzzbusters. But we are still manufacturing them. On the way to Manitoba these fuzzbusters sort of found their way into cars. Even though they were illegal for use, they were not illegal for manufacture. I sort of saw in my own inevitable way a similar situation there, where the bylaw would allow, or the bill allows here, for licensing of guns to say they are not a replica, or in the second instance, you can have a replica if you are using it for theatrical uses.

My concern is, once we manufacture a product in Ontario, it inevitably finds its way to being used. That is where I just wanted to see how you felt about the exemption, because I remember the fuzzbuster case, I guess, and how they found their way into cars on the way to provinces and states that allow the use of them.

Judge Allen: Just in developing that theme then, I think it gets back to my comments about possession earlier. Maybe this committee might inquire as to whether the federal government would be prepared to prohibit or in some way regulate–preferably prohibit–the importation of this sort of thing from outside of Canada. I think probably Miss Nicholas and I are on the same wavelength, that there is that gap that if you can have it, you are going to have it sort of thing. You want to outlaw it completely to give you the effective control.

Mr McGuinty: I really commend the judge's contribution, especially because it has helped to clarify my thinking on this matter.

We have various categories. We have real guns; they are easy to define. With gun replicas, there is an element of the subjective there because you start using terms like "resembles" or "might reasonably be mistaken for such a firearm." Then you can have the toy gun. If you wanted to be facetious, you could have a fourth category, a real gun that fires only replica bullets, but that is hardly within the purview of our consideration.

There is no doubt that one can get involved in some incidental carping about the kind of can of worms we are going to get into when we have the minister in power or somebody in this office making a decision. "Is this enough like a replica to be considered a replica or should it be considered a toy?" That is a problem. That is a followed effect. I think it is inevitable, unavoidable. I think the real focal point here is the fact that replicas can be deceiving.

When I first came to Toronto, I had a curious experience. I am just a country boy from the Ottawa Valley. I would be walking up Yonge Street and I would pass these curious stores. I saw that they were selling marijuana papers, scales, needles, syringes, little riggings that are used for heating up cocaine, I guess, or whatever the hell you do with cocaine. I raised the question in the House and I was welcomed to Toronto. Then I met a gentleman on the plane one night and he introduced a bill in the House of Commons, which hit the head shops and prevented their selling this stuff.

Now as I pass these stores I still see guns. I have no experience with guns, but they sure as hell confuse me as to whether they are real or not. That is what you are talking about, the replica that is really most likely and reasonably to be taken for the real thing. That is what we are concerned with here. That is the principle. The examples Mr Farnan cites every police force, I am sure, could cite. You have seen, Your Honour, these things being used, sometimes with tragic effects. That is what we should be focused on, and it is still only a partial solution–and I think the wisdom of Solomon and Ian Scott combined is still a combination–to distinguish between a replica and a toy, some of these toys. The thing we want to avoid is having policemen going into Romper Room and checking little waifs' diapers to see if they have a piece concealed.

Miss Nicholas: They conceal a lot in those diapers too, Dalton.

Mr McGuinty: I agree. I think if we focus on the basic distinction here between a gun replica, a toy and a real gun, the thing missing in this is that it should first of all define a real gun. That might be taken as obvious, but it would, to my mind, simplify it somewhat. That is the distinction. I regret having been at the outset, I think, needlessly distracting by carping a bit on the kind of difficulty that we might get into in distinguishing the fine point between replica and toy.

We are dealing here with, at best, a partial solution. It is the art of the possible, like politics itself. It is a good step; I would like to just add that, Mike.

Mr Neumann: First of all, I would like to once again, as I did at the time of the debate in the House, commend the member for his bill. The incident which triggered the inquest occurred in Brantford and in fact was the subject of–

Mr McGuinty: An incident which triggered the inquest?

Mr Neumann: Yes, the incident which triggered the inquest–

Mr McGuinty: It is an unfortunate image.

Mr Neumann: –occurred in Brantford, the unfortunate incident, and it was the subject of the first question I asked in the House as a new member of the Legislature. At the time the bill was debated, during private members' hour, I supported the bill. I think it is a good initiative to bring this subject out for discussion and I am pleased to see you here today supporting it as well.

However, as you have probably gathered from some of the discussion here today, it is not a black-and-white situation entirely because one has to try to be consistent in legislation and in its application. I am wondering whether in preparing to come here today, or in the research that your organization did, did you follow the discussion which did occur at second reading in the Legislature?

Judge Allen: I did not.

Mr Neumann: The member for Scarborough West (Mr R. F. Johnston) raised some very real concerns about this kind of legislation. While I support the legislation, I wonder if perhaps you could comment on this quote. He said:

"Are we going to start banning replica rubber knives as well, if they look like they are throwing knives? Do we not understand that in fact this is a very dangerous kind of infringement on civil liberties by the state and that the carrier of a weapon, whether it is a real one or a replica, who involves himself in a crime bears some responsibility at that time?"

He seems to suggest here that it is the use rather than what it is that is the problem. How would you respond to that serious concern raised by Mr Johnston?

Judge Allen: I think there is quite a difference between a rubber knife and these articles. That is why I commend to you–I have not seen Mr Farnan's collection, but I can well imagine what it is like–the opportunity to take a look at it and see what they are.

1640

Mr Neumann: No, my point was the reference to the infringement on civil liberties and the obligation on the carrier.

Judge Allen: Sure, but is the obligation on the carrier such that he or she may be killed because he or she is carrying it and a police officer mistakes it to be the real thing? You do not want that sort of penalty, nor do I. I do not regard this as a dangerous infringement on anybody's civil liberties. I think that they are offending my rights if they are carrying something which can be used offensively against me and to frighten me, not necessarily to injure me physically but to frighten me and in that way injure me.

Mr Neumann: A further question, if I may, Mr Chairman: At the federal level, the government moved to ban replica toy bombs. I wonder whether or not you think that might create enough of a precedent that the federal government might follow through on this issue, because clearly it is preferable to see this act enacted nationally rather than in a single province.

Judge Allen: I agree with you that this is really a national problem; it is not confined to Ontario or any part of Ontario. It is probably a nationwide or a worldwide phenomenon. But to get back to what I said at the outset, my view is, get on with this piece of legislation and use it as a launching pad. If you can persuade the national government to enlarge its prohibitions on this type of replica stuff, fine and dandy, but I think you have the opportunity now to move here. If you are overtaken by the federal people bringing in legislation, God bless them and God bless you.

The Vice-Chair: Thank you, Judge Allen and Ms Humphrey, for your presentation.

We apologize to Mr Peacock for calling him 15 minutes late. At this time, I would like to call Don Peacock, alderman for the city of Guelph, as our next presenter. Mr Peacock, the clerk of the committee will pick those up and distribute them. As I explained earlier to our presenters, we have allocated 30 minutes for your presentation and you can choose to use that full 30 minutes for your presentation or you can leave some time for questions from committee members.

DON PEACOCK

Mr Peacock: Even though I am an alderman in the city of Guelph, I appear as an individual. I do not represent the city; I am not officially here as representing the city.

I can tell you that I was a police officer for over 30 years, so I am knowledgeable of that of which I speak. I want to emphasize that, as far as I am concerned, we are not talking about toys here; we are talking about replica firearms. I am 61 years of age, ladies and gentlemen, and all my adult life I have carried a firearm, as a soldier, a custodial officer and a police officer. I am familiar with firearms.

However, when I was preparing to come here, I went to the place where I worked for 31 years to see the firearms officer. He produced for me, in plastic bags, along with ammunition, two .45-calibre United States Army pistols and asked me if I could determine which was the real one and which was the replica. I can tell you truthfully, ladies and gentlemen, I could not do it and I have carried a firearm all my adult life.

The photocopy you have here is of a replica that I was asked to identify. The barrel of the replica itself is partially plugged halfway down. The inside part of the firing pin, which is the part of the firing pin that would actually strike the detonator, is not there, nor is there any provision for it. The hammer will cock and the trigger will fire the hammer, but there is no firing pin that would hit the detonator. The clip that goes into the bottom of the butt or handle, for those of you who are not familiar with firearms, would not hold .45-calibre ammunition. However, the firearms officer was able to load that clip with nine-millimetre ammunition.

The story behind the firearm itself: The replica firearm was purchased at a garage sale for $10 by

a gun collector. It came into the hands of the police because the gun collector took it to the firearms officer to have it registered, and when he was told two days later that it could not be registered because it was not a firearm, it had to be explained to him why it was not a firearm, just a replica.

These are replicas of weapons that are equal in weight. This particular one is made of metal. It feels like a Colt .45, it looks like a Colt .45 and I think anyone would easily mistake it for a Colt .45.

It is no offence to carry this replica. The person who bought it did not commit an offence. Normally he would require a firearms acquisition certificate to be able to buy that, even at the garage sale. The auctioneer, if it was at an auction, would not sell him a firearm unless he had a firearms acquisition certificate, but you do not require a firearms acquisition certificate to purchase a replica. So he actually did not commit an offence. It was seized because he did have ammunition, so the ammunition and the firearm were seized.

Miss Nicholas had asked me if I had brought with me a real gun.

Miss Nicholas: No, a real replica.

Mr Peacock: I can tell you that I did ask the chief of police of the city of Guelph to lend me that replica to bring down to show you. He refused, and I understand why. This is why you are seeing a picture. He said that if I was involved in a motor vehicle collision or was otherwise stopped, if I had been fooled by this replica after all my adult life handling firearms, then another police officer might be so fooled also and I might find myself down at 51 division or some place instead of being here.

I do not want to go into statistics. I see by your schedule that you are going to hear from other people, including an alderman from the city of Hamilton. I think they will give you the statistics and the stories you will want to hear.

1650

I can see no possible reason why anyone should possess a replica. It has been suggested they might want to have some sort of collection. Too often, I believe, you have heard that after a teenager, usually a teenager, was shot by a police officer. The usual comment in the press is, "But he was only a boy and he was only carrying a toy."

You can see in today's newspaper the article here by Michele Mandel; this is not with regard to firearms, but she does say what was going through the police officer's mind as he stopped this individual, where the lady was shot by the police officer. These are the words of another police officer, who said: "His heart beating rapidly, his adrenaline at its peak. He is approaching two males and one female in a stolen car. He doesn't know if they are friendly, doesn't know if they will surrender peacefully."

That is exactly what does go through a police officer's mind when he is stopping someone, and if someone were to present this to the police officer, his first reaction would be to defend himself.

Basically, that is all I have to say to you, ladies and gentlemen, other than that in seven minutes I am supposed to be at my council meeting's committee of the whole. I will have to forgo that. I thought this perhaps was a little more important than my attending my council meeting's committee of the whole. I have a meeting at seven o'clock. At the conclusion of that meeting, the mayor will ask if there are any notices of motion. Tonight, ladies and gentlemen, I intend to introduce to the council of the city of Guelph a notice of motion to prevent the sale of replica firearms in the city of Guelph.

I will close with that, ladies and gentlemen. If there are any questions, I would be more than pleased to try to answer them for you.

Mr McClelland: I did not know that I was going to luck in, as it were, inasmuch as you have had a great deal of experience. Tomorrow afternoon we will be hearing, according to the schedule, all things being equal, from a representative of Crossman Products.

I want to touch base very briefly, and ask for your comment in respect to–and I do not want to use the word "shortcoming" because I do not want to have anything that might sound disparaging in any respect–the issue of the use of CO_2 and airguns; more specifically, CO_2 and air handguns. Maybe Mr Farnan also would like to comment, because I do not in my mind understand whether or not a definition of "replica" under the act would embrace those particular products and I would be interested in your comments. I know there is some distinction.

May I also say that I have spent, albeit briefly, four months with the police force and it is not always daylight, it is not always a situation where one has a clear view. It seems to me as well that an airgun therefore could present an equally problematic situation. I would be interested in your comments on that.

Mr Peacock: I think most of the airguns that are manufactured today would fall into the category of firearm. I understand the legislation

in the code has been changed, but the definition of a firearm did include air pistols or airguns if they had a velocity of over 500 feet per second. I understand that recently has been taken out of the Criminal Code and it has been changed so it would not be a replica; it would be a firearm itself, even though it would not be a restricted weapon.

Mr McClelland: All right. I may be lacking in terms of knowledge, which would not surprise some of my colleagues, but I am not aware of that amendment to the Criminal Code. I think it was discussed, but in the event that it was not, the restriction with muzzle velocity–there are, as an example, BB guns that look very much like a .38 handgun or whatever.

In short, I guess I am not trying to elicit any particular response with respect to the inclusion or exclusion of airguns, in your opinion, if in fact I am correct that the Criminal Code does not. I may even stand corrected and I may indeed find out that I am wrong, that the Criminal Code does define handgun to include airguns.

Mr Peacock: It is my understanding that the code has been changed to include these. It has taken out the 500 feet per second, the velocity.

Miss Nicholas: I am still trying to grapple with the difference between a replica and one that is determined to be a toy gun. I can see, even from the photograph and from the photocopies, that this very much is intended to look like a real gun and there could be a mistake in it both at close range and at a distance range and that any policeman who may interpret this to be a real gun at any distance is probably making a good judgement call, even though he or she may be inaccurate.

In terms of the bill, though, I know we have distinguished the toy gun and the replica, but I am having a little bit of trouble with just where we draw the line. Do we draw the line, as I say, with a water pistol, or do we determine the situation? If you are 20 feet or 30 feet away in a brightly lit room, is that how we determine; or would we determine whether it is a replica or whether it is a toy gun or something that may look like a gun but is not intended to look like a gun in a situation?

I am thinking of the dark alley situation, or not a well-lit area, where someone may have something that the form or shape may look like a gun but in fact, if it was in a well-lit room, anybody would be able to distinguish and would know, even someone like myself who is naïve in these matters, that it is not a replica gun, in fact it is a toy gun and in fact it may not even be meant to be used as a gun in a toy situation.

In terms of maybe adjusting the bill to one that is a replica gun like this and meant to look like a real gun and even an expert at close range, given a lot of time, may not be able to determine whether it is a replica or a real gun, and the other situation where you look at the darkly lit alleyway and you have something that may take the shape of a toy gun or take the shape of a gun but may not be a gun at all or not even meant to be a toy gun or not even meant to be a replica gun but because of the dimly lit circumstance it looks like a replica gun, can you give any suggestions, when you say you support the bill, how that distinction can be made?

Mr Peacock: Yes. Toy guns now, and I am speaking of toys, children's toys, generally are made of plastic. I think the manufacturers realized and foresaw something coming. If they are coloured black, most of them now have the tip of them red, but some of them have the red tip removable. A lot of the guns now are yellow or purple or chartreuse or something like that to distinguish them as a toy.

My concern is that using this type of a replica, going into a Mac's Milk store, the clerk would know that was not a toy gun or would think it was not a gun replica, it would be a real gun. A person going into a Mac's Milk store is not going to have a little yellow plastic gun in his hand because he is going to get laughed out of the store, but if he goes in with a gun replica, a firearm replica, he is going to get his money and the report is going to be that the clerk was held up by an armed man. The police are going to be looking for an armed man and they are going to approach that person as though he were armed. If he does produce it, they are going to think it is a real weapon.

1700

Miss Nicholas: In that instance, though, if these become unavailable, which is what the bill, and we, are aiming to look at, then would you suppose that if a person could not get his hands on this, he would go to using a real gun in the instance you mention or would he go for a less sophisticated replica?

I am suggesting that if it is a less sophisticated replica and in fact, as you have just suggested, is a plastic gun that does not have the weight or the magnitude of this replica, in a less lit situation it might still very well be used with a certain force or intent that it was to be used as a real gun–not in your Mac's Milk situation, where I would suggest that the person may, if he opts for a gun, opt for a real gun, but in the other situation where

people cannot get a replica. They do not want to use a real gun but want to use that source of threat or imply that they have something in their hands that could be used very dangerously.

I would hate to see a bill that just outlaws these very real-looking guns that only an expert can identify, while a good toy gun from a distance in a not-well-lit situation could still be perceived by a policeman to be a firearm.

Mr Peacock: I think anyone who is going to buy a good replica would choose to buy the real firearm if he had a real firearm available to him. A real firearm is not all that readily available. They are expensive and the person who is going to sell them is very careful to whom he sells them, keeping in mind that they should all be registered, from the manufacturer to the dealer and from the dealer to the individual who buys them. It is an offence for a person to use a replica firearm in the commission of a crime, but it is not an offence for a person to carry a replica firearm.

Miss Nicholas: So you are defining a replica as one that, for this bill's purpose, really looks like a very good copy of a real gun and not a toy one.

Mr Peacock: That is correct.

Miss Nicholas: I am curious. How much does one of these things cost? Do you know?

Mr Peacock: That was purchased for $10.

Miss Nicholas: I know that may not affect the bill, but I think it was a question worth asking.

Mr McGuinty: First, I want to thank you, Mr Peacock, for your very enlightening talk, based on experience, the best informant of all.

This bill is so badly worded that it is no wonder we are confused. First of all, it should begin by telling us what a firearm is. Hence, if we had that definition, we would have an answer to the question posed by my colleague regarding whether or not an error–

Mr Peacock: If you do not mind me interrupting you, sir, I believe it is section 82 of the code that would give you the definition of a firearm.

Mr McGuinty: "'Firearm' means any barrelled weapon"–so if you take the barrel off, it is not a firearm; fine–"from which any shot, bullet or other missile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm."

I would have to work on that legalistic gobbledegook for a while to understand it. If I am going out to look for an antique, an 18th-century cabinet, I have to know what the real thing is if I am going to make a decision regarding whether what I am looking at is a replica. I will have to study this. I guess this does explain it. It is my own ignorance. I am a simple layman. All I can bring to this is the dictates of common sense. Fortunately, I am not a lawyer.

Can you tell me if there is a difference in the gravity of an offence for a holdup with a replica or with a real firearm?

Mr Peacock: To my knowledge, no. I have been out of the police service for five years. If you are using a replica firearm, then there is the additional penalty, an automatic penalty of imprisonment if you use a firearm in the commission of an indictable offence.

Mr McGuinty: But if you use a replica?

Mr Peacock: In that instance it is an offence to use that in the commission of a crime if you purport it to be a firearm.

Mr McGuinty: From what you have said of this instrument here, could this be converted to a firearm?

Mr Peacock: I would say a good machinist could do it. If he was in his shop, he could do it in five minutes.

Mr McGuinty: That is very interesting. That introduces a whole new dimension into this. Instruments that could be sold as replicas relatively freely at present could be converted to firearms and hence you would have a predictable and very easy circumvention of the law on our gun control.

Mr Peacock: On that particular weapon, the barrel is plugged. The firearms officer I was speaking to did not know how it was plugged, whether it had originally been open and plugged or whether it was manufactured that way. Also, the barrel was not rifled. Do you understand the meaning of rifling?

Mr McGuinty: If some poor unsuspecting soul had the trigger mechanism altered to make it workable, had the whatever it is down here to hold the bullets, had the right type of cartridge to put in and he fired it, he would get a hell of a surprise. Thank you very much, sir, your background is very helpful.

Mr Peacock: You are welcome.

Mr Farnan: First of all, I want to thank you for coming down and sharing with us what I thought was a very dramatic anecdote or experience, I think you said at the Guelph station, in terms of the two guns.

It is really a short comment I want to make. I think some of Miss Nicholas's remarks have kind of helped pinpoint and focus the issue the committee has to address. There is no question at all in my mind that the replica gun has to have legislation banning it. There is absolutely no doubt in my mind. But I think one of the problems is what else is banned.

I hope we are going to look at some of the other toy guns which are indeed replicas. The manufacturers, for example, in selling these toy guns which I picked up at various department stores, talk about them as being identical to the real thing and give instructions never to point it at anybody and so forth.

I would suspect that you are not talking about a mistake made in a dark alley in dimly lit circumstances. I would suspect that some of the toy guns, toy replicas, are guns that could easily be mistaken in a brightly lit situation. In fact, I would suggest that if I held up a billboard across the hall of the Legislative Assembly and said to the Attorney General or the Solicitor General (Mr Offer) or any member, "Which of these are the real guns," in the distance and in the light of the assembly you might say, "I think that is the real gun," and you might be right, but I do hope we can have a look at those.

What is very interesting is that Toronto has passed some legislation. Interestingly, Mr Peacock is going back to Guelph to look at proposing a piece of legislation, a bylaw. When this committee has to grapple–and already I can see different interpretations will be made. Hopefully, we will be able to come to a consensus opinion that can say we can live with this definition. If we fail to do that, what we have in its place is Guelph with a definition, Toronto with a definition, maybe Windsor with a definition, maybe Brantford, Cambridge and so forth across the province.

Indeed there is a sense of responsibility. I think what Toronto and Alderman Peacock are attempting to do is that they are certainly registering the importance of the issue by having local bylaws address it and putting us on notice that maybe perhaps a provincial response, and ultimately a national response, is what is required.

1710

Mr Kormos: Carrying on a little bit with what Mr Farnan was commenting, the questions and comments of Miss Nicholas and Mr McGuinty to Mr Peacock really have been valuable in helping us to perceive what this legislation is all about. I perceive what Mr Peacock is saying is that what we are talking about here is not the extruded plastic, big boppo kind of toy that kids are going to play with in the backyard–as he says, inevitably they are some fluorescent green or pink or what have you–but I am so pleased that he brought this photograph; it is the very sort of thing that we are talking about here.

The comment was made about civil liberties. Once again, I cannot think of any responsible parent wanting his kid to play with what has been shown to us by way of photograph by Mr Peacock. I mean, that just boggles the mind. And quite frankly, I am confident that the vast majority of, let's say, gun enthusiasts would agree with me, because their perspective, as I understand it, is that if a kid is going to learn that firearms are to be respected and dealt with carefully, it would be anathema to that perspective to encourage him or her to play with a gun as if it were a toy that cannot cause any harm.

Indeed, there are those people, and there are many of them, either Nimrods or mere firearms enthusiasts, who I am confident would find equally distasteful the prospect of a parent encouraging his kid to play with a realistic looking firearm. It runs contrary to everything that they believe in in terms of letting their children, as I say, and I will repeat it–many of them do have their children involved in their sport, be it target shooting or what have you, but having their children from an early age understanding that a gun is not a toy, that a gun is something that has to be treated very carefully and only after a great deal of learning has been undergone.

The legislation speaks, as Mr Peacock has focused his comments, on replicas, and I am hoping that tomorrow, Mr Chairman, you could have legislative counsel here to talk about some of the Criminal Code references that have been made, including that in the definitions section.

They were talking about something that, one, closely resembles, or two, might reasonably be mistaken for such a firearm. This definition does not go to the extremes. It does not say what might be mistaken in a dark room by a police officer who is very tired or very stressed. Obviously, at that point the person who is dumb enough to make a gesture to the police officer with a hand that could be perceived as a firearm puts himself at risk with the police officer as well; there are no two ways about it. Once again, right time, right place, the classic gesture of the hand as a handgun, with the forefinger pointed straight forward and the thumb cocked back, can be as dangerous, but we are clearly not talking about

that. I think Mr Peacock understands that full well. We are talking about the obvious things here.

Then, as Mr Farnan says, it does not matter whether–again, I just cannot see this thing being sold in the kids' department at Eaton's at Christmastime and I just cannot understand what pathetic type of person, again, would buy this at Christmastime as a gift. You might buy some whoppo-boppo zap gun for your kid, and, as I say, there are parents around who would find even that questionable, but you are not going to go around looking for .45-calibre US army replicas.

Similarly, Mr Farnan's legislation is broad enough to cover those things that might be sold as toys but that indeed are sufficiently authentic-looking to have fulfilled the definition of replica. This definition is one that, as we comment on it and reflect on it more and more, and as we get some guidance from legislative counsel, really does exactly what most of us want to do, and that is not to infringe on anybody's civil rights but hit the nail right on the head.

I am not talking about the exceptions and I am not talking about the extreme cases, but I am talking about the mainstream cases that I am sure cops have to deal with on a daily basis and young women who are trying to earn pocket money are confronted with at 7 Eleven and Mac's stores and what have you on virtually every Saturday night in every community across Ontario.

I appreciate Mr Peacock's comments. I think he has helped us understand exactly what it is we are talking about banning. We are not banning toys. We are talking about banning things, replicas that quite frankly are designed to be used for the purpose we are talking about and not designed for play.

Mr Peacock: Thank you. If I may be so bold, I wonder if I could impose upon you to have my colour photographs back.

The Vice-Chair: Mr Peacock, on behalf of the committee I would like to thank you for your presentation. I am sure it will come in useful while we have our clause-by-clause deliberation on this bill.

Mr Kormos: After he makes his way back to Guelph tonight, maybe he could come back and comment on highway conditions at Ministry of Transportation estimates. He might have some valuable comments.

The Vice-Chair: Members of the committee, the five o'clock presentation this afternoon has been cancelled. We have another one at 5:30. Unfortunately, the 5:30 presenter could not fill the five o'clock time slot so I am going to adjourn the committee for 10 minutes. We would ask you to be back at 5:30 for the 5:30 presentation. If there is a vote in the House, it will probably be held at a quarter to six.

The committee recessed at 1717.

1730

The Vice-Chair: It being 5:30, I call this committee back to order. Our presenter is Councillor Tom Jakobek from the city of Toronto. Welcome to the committee, Mr Jakobek. The time is yours.

CITY OF TORONTO

Councillor Jakobek: I will try to be brief because I can see that you have had a number of, I should think, very good presentations that were made. I just would like to say the following, and that is that we are not talking about space blasters or kids' little guns really. I think there is an argument one could make about whether children should be playing with toy guns and whether you need toy guns or water pistols or whatever, but that is not the issue today and it certainly was not the issue before Toronto city council or many of the other councils and police commissions, I think, that dealt with the issue.

The issue really is, how do you justify having something which is, for all intents and purposes, used for illegal purposes and that really has no other purpose? There are situations with replica guns, such as the situation some months ago at the Eaton Centre where an individual decided to go and shoot off 30 rounds of ammunition with a gun that smoked at the end, shot out its shells after it shot and looked exactly like a Colt .45. What purpose does it really serve?

I have heard people comment about starters' pistols. A starter's pistol does not have to look like the real thing. A starter's pistol can look like a square box, it can look like a fluorescent pink gun with a twirl to the end of its barrel or something.

There is no real necessity for a replica handgun. If a person wants to collect them, by all means he can collect them, just like they collect the real thing, which is under a special permit and request and a whole host of other regulations, but there really is not any particular purpose.

Because I do not think we as legislators in any form need to want to always legislate everything, I think the next question is, what harm do they do? It is a free, open market. Why should we legislate? Why should we say you cannot have them? What is the harm? I think the harm is that a lot of our convenience store and variety store

robberies and our lesser robberies, if I can call them that although they can be just as serious, are happening with replica guns.

The reason why they are happening with replica guns is twofold. One is–and I am sure the police specialists you talked to or who will come before you will tell you–because they are usually done in the heat of the moment. It is something that they get into, that state of mind where they need the money or they want the money, whatever it is, and they go for it right there. In many cases, they will rob the store that they get them from. That is one reason why making them less available will actually, in many cases, prevent something from happening which is on the spur of the moment, which is just in that heat of the moment or what have you.

The other thing I heard some critics of the bylaw say was, "If they can't get the replica, they'll get the real thing." All I can suggest to you is that the fact that we need stronger gun controls in this country is something that the federal government has to deal with. I do not believe that most of the people who are getting hold of these replica guns would in fact have the ability, and they would have to make the extra effort to get the real thing. I do not believe that is really a comparison that one would make. I think that most of the police, who have a certain ability to know these things and who can tell you at first hand, will tell you that it is very unlikely that you will find people who are in this situation, who are robbing these variety stores and convenience stores, in most cases going that extra effort to get a real weapon.

Let me just come to the last thing that I wanted to bring up, and that is a lot of people have said: "How is it safety for the public? The only person at risk is perhaps the person who is committing the crime." In the case of the officer who shot a person–it was mentioned here by one of the deputations–or the case of the Eaton Centre, the officer arriving on the scene has absolutely no knowledge whatsoever that this is a replica. In fact, I put a replica handgun in the hand of the former chief of the Metropolitan Toronto Police Force and it took him two minutes to figure out that it was a replica gun without opening it and checking down the barrel. So the officer is faced with a situation where, for all intents and purposes, he or she is looking at a real gun.

Unfortunately–and I would not want this to be something showing any disrespect to the police forces–they are not all good shots. In fact, sometimes they are very good shots but someone standing behind the person is shot. I think the risk of an innocent person being injured or killed because of the fact that someone uses a replica handgun–there are all kinds of people out there who do it, even for the kick of it–is too high a risk for us to warrant the necessity of an open market which does not need any regulation. So for all those reasons, I am basically putting forward to you a simple case that replica guns have had their day, replica guns are not something that we need and are something that we should, as much as possible, not have.

I do not believe the city of Toronto bylaw is a great one. I do not believe it should be the one to live by or go by. I think there could be some flaws in that bylaw, although it is relatively new, but it is a start. We felt strongly enough, it was virtually unanimous. It was a fight in the beginning, but it was virtually unanimous. It is unanimous now, and having written to all the mayors of Metro, I believe they are going to–at least two or three of them are going to–in fact recommend legislation identical to the city of Toronto's as an interim measure, because obviously these bylaws that these municipalities pass are absolutely useless if they are not passed by literally every municipality, every county or every town anywhere near a particular metropolitan area.

I am suggesting to you that provincial legislation is really the way to go about it. I can see on many issues making the initiative at the local level and letting the local municipalities do it, but I do not think this is an issue where that will work, because you would have to have total uniformity within all the local municipalities or else you would never make it. Someone would set up shop in a little town far away from a local municipality and import them legally and the next thing you know they would end up all over the place.

I am just asking you to support Bill 145 and not to worry about a small number of people who would tell you that replica guns are a harmless thing, and more specifically to support Bill 145 because, as my grandmother would have said, you're better safe than sorry. I think the evidence is there, I think the proof is there to necessitate the bill's passage. I would be happy to answer any questions.

The Vice-Chair: Thank you for a very succinct and precise presentation. We do have questions from committee members.

Mr Kormos: I am asking you this because I suspect it was put to you during the course of city council's consideration of its bylaw and it has been raised today. You walk down–here we go,

it is Yonge Street again–but you walk down Yonge Street and you have all sorts of shops with what appear to be prohibited weapons lined up in the windows, nunchakus or nunchaks or flying stars and all that sort of stuff. It is only when you go in that you realize they are made of rubber or hollow plastic, in the case of the nunchak; that they are replicas. They are treated by the police as very illegal weapons, prohibited weapons, but they are mere replicas.

The query was raised earlier this afternoon: How did you justify condemning and sanctioning replica guns when you obviously would not condemn or sanction replicas of prohibited weapons of other sorts? I know what I would say if I were you. I suspect I know, but I think it is important that, having gone through this experience, your comments in this regard be on the record.

Councillor Jakobek: Let me just say that someone brought that up with knives, the fact that knives are not even prohibited. I mean, they are prohibited as a weapon, but there is nothing stopping me from going out and buying a 12-inch or 18-inch blade, quite frankly, or a machete. I can go out and do that today.

I am not a police officer and I will not suggest that I am or that I have the knowledge that a police officer has, but I have spoken to police officers, and specifically to the former chief, and my feeling on that question is the following:

If a police officer saw a person in front of him who had a knife or what appeared to be a knife, or a nunchak, or whatever they call them, or boomerang, whatever he had, obviously that is something which could draw and in many cases will draw the police officer to pull his weapon –not in every case. Depending on the distance from the person, depending on how he is handling it, he or she may not pull the weapon.

There is no question as to what the officer would do if the person has what appears to be a real gun. If they have what they perceive as being a real gun, they will pull their weapon, they will aim their weapon, they will give them one warning, if they turn around or point the weapon towards them, they will pull the trigger. That is the big difference.

Obviously, if the situation arrived where the officer is in close proximity to another person, the person is running after him and he has one of these illegal weapons that you are talking about, it is quite possible the same situation could arise. I am telling you, though, that the number of those instances are very small; the number of these instances are alarmingly high.

Mr Kormos: When you examined the issue, did you identify sources, advertising sources and manufacturing sources, of–we were shown photographs earlier of what most of us are considering a real replica. This is the sort of thing where you told us your chief of police took some time before he figured out that it was not the real thing. You identified, again, sources of them? Where is the advertising? What is the conduit that is being used? I have the feeling it is the Soldier of Fortune phenomenon that is part of the conduit for these things.

1740

Councillor Jakobek: A lot of the documentation that you are asking for I do not see contained in your information here today. I can consult the city clerk as to what was given and what was not given.

Let me just say that when we looked at this question initially–and I realize that as a legislator, you have to look a little further and you have to not only look at the impact but you have to look at what is really out there–we looked at it simply from the point of view of what replica handguns can do in terms of eliciting acts by police officers, etc, people being mistaken for having the real thing. We did not look initially at the impact of the industry itself as to who has them and where they have them and why they sell them, but I can tell you this: There are very few importers, almost no manufacturers, but there are a number of stores on Yonge Street, as you have mentioned, and other places where they are sold widely.

I have not got the list with me, but as I said, I will contact the clerk and I am sure I will have time to get it to you within the next couple of days or so. There are lists of places in Toronto that we are aware of where they would be affected by the bylaw. We sent out mailings to a large number of people in the city of Toronto who were aware of it. We advertised the bylaw in all three dailies. Only two people came in opposition to the bylaw, one of whom I see is listed for tomorrow and another one representing the entertainment industry, and that is all.

Mr Kormos: Did you have any legitimate gun enthusiasts come in opposition, any hunting organizations, any target-shooting organizations? Did any of those people speak in opposition to the municipal bylaw?

Councillor Jakobek: No, and all of them were sent notices as per our city notice procedure. We sent out notices to anybody who had anything to do with handguns or replica guns or firearms whose name we had or were able to

solicit from mailing lists, and as I said, we put advertisements of the bylaw in the three daily newspapers. I might add that there was a considerable amount of coverage on radio stations and television stations which elicited two or three inquiries to my office which I was made aware of, so I believe, in all fairness, that just about anybody who has anything to do with replica guns would have heard about it.

Mr Kormos: This is my last question. Did you identify a legitimate consumer of replica guns, and if you did, did you consider ways of accommodating that legitimate consumer, perhaps not within the jurisdiction of the municipality but the jurisdiction of other governments?

Councillor Jakobek: Yes, and that was the entertainment industry. The entertainment industry is very large in Toronto. There is a number of filmings that are done on a regular basis. In fact, our city is quite often flying the American flag. We did in fact note that there was a legitimate reason for replica guns in terms of the entertainment industry. It is very small in terms of what they need, but they do from time to time require the use of replica guns, and it has to be somewhat realistic, because obviously they are doing it for the motion picture industry or what have you. The bylaw does address that.

It has been pointed out to me, and I think it is probably so, that the bylaw may in fact be too liberal in respect to how it handles the entertainment industry. Quite frankly, the entertainment industry's deputation was simply this: "Please make it somewhat easy for us to obtain a permit, whether we go to the chief of police and obtain a permit in order to use our replica guns, which is all we're looking for, or you allow us to bring one into the country for the purpose of the shooting and return it or deposit it with the chief of police. We don't even mind depositing it with the chief of police every night when we're through with it, but allow us to have the ability to use them for our filming only and we'll recognize and we certainly would have no objection to your bylaw."

So we made what we thought was an amendment that was reasonable and that they could live with. I am not so sure whether or not your legal counsel will feel the same way, but if you are asking me, "Is there someone who legitimately uses replica guns," the answer is, "Yes, the entertainment industry."

Mr Farnan: First of all, thank you for being here and I would like to commend you for the leadership role that you took with this issue at city council.

One of the things the committee is going to be grappling with from the discussions we had earlier today is just how far we go in the definition of "replica." I am sure you have looked at all the different types of replicas.

The type that I want to focus on are basically plastic-type replicas that are exact imitations in terms of colour and shape that you have seen at the department store that could be purchased for $4 or $6. To all intents and purposes, even in good light, at the distance we are seated apart, they could be mistaken for a real weapon. What was the kind of discussion around your council table and how did you address that particular aspect of the issue?

Councillor Jakobek: Actually, the question that was put to me by the media at the time was whether or not this was a ban on water pistols. Actually, my initial reaction was no–you know, those fluorescent green or pink ones or whatever –but there are water pistols that could be mistaken for the real thing, and you know how the industry is–any industry. If you tell them they cannot do one thing because they cannot use metal, for example, they will use plastics or acrylics or something else which will basically be as realistic as the real thing. In fact, you will have a hard time figuring out whether it is metal or whether it is not.

I have reviewed the bylaw, and in fact I have reviewed it with our city solicitor, and for what it is worth–and we are not experts, by any means–we both felt that your bill would enable the minister, I guess, and/or the judicial system to decide on what is real and what is not real.

Quite frankly, I have a lot of faith in our police forces, our judiciary, and for that matter the government of the day, to decide on what is real and what is not real. Regardless of what party the minister for that particular area is in, I am sure that person is going to look at the issue at the time, if necessary, and say, "Yes, it looks like it could be mistaken." As I said, I think better safe than sorry.

Mr Farnan: In terms of my sitting down with legal counsel and getting assistance to draft a proposed bill, we focused on sale. I talked earlier about there having been some very broad support for the bill. There have been individuals or groups that have suggested it needed a broader application in terms of manufacture, etc. The rationale I had considered was that the manufacture was offshore. Is that true or not?

Councillor Jakobek: Yes. Actually, what I did was I managed to find out from the entertainment industry where it gets them. They

gave us a list. We advised them by way of that list. In fact, most of the people who supply replica guns for the entertainment industry, and for a legitimate purpose, are importers. They simply import them. They come from the United States through Hong Kong, Thailand and a few other places where they basically manufacture them at a reduced rate; in many cases, by the way, using the same mold as the original gun–for all intents and purposes, it is the same gun–and then ship them here.

Mr Farnan: What was the experience in terms of the plastic weapons that do indeed look real? Was that manufactured offshore?

Councillor Jakobek: I have yet to find a manufacturer in Toronto, other than a theatre supply company, which will basically cater to your needs. If you need a bazooka and you do not have one, they can manufacture one, or what have you; I guess they can get hold of it. They say they manufacture anything, and they have manufactured special guns which I guess for certain movies have to fit in certain places or whatever. But other than that one theatre production company or supply company, there is nobody whom I am aware of or whom we were aware of or who was brought to our attention who is an actual manufacturer in Toronto.

Mr Farnan: That was my experience in terms of Ontario, but I was wondering if we had missed out on some information. I do not think so.

Again, I thank you for your presentation. What I find interesting is that with you coming in at the end and not having been here earlier, you have answered a lot of the questions that we were asking.

The Vice-Chair: Mr Jakobek, on behalf of the committee I would also thank you for your presentation. It was very succinct, very precise and I am sure it will aid the committee in its deliberations at this point.

Councillor Jakobek: Thank you very much. I appreciate it.

The Vice-Chair: This committee stands adjourned until tomorrow afternoon.

The committee adjourned at 1751.

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Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Gun Replica Sale Prohibition Act, 1989

Second Session, 34th Parliament

Tuesday 21 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 21 November 1989

The committee met at 1534 in room 228.

GUN REPLICA SALE PROHIBITION ACT, 1989
(continued)

Consideration of Bill 145, An Act to prohibit the Sale of Gun Replicas.

The Vice-Chair: Today we will be considering Bill 145, An Act to prohibit the Sale of Gun Replicas.

I would like to call our first presenter forward, Dominic Agostino, alderman for the city of Hamilton and regional councillor. Welcome, Mr Agostino. As I am sure you are aware, the procedure before the committee will be that we have allocated approximately 30 minutes for your presentation. We would appreciate it if you left at least 10 minutes of that presentation for questions from committee members. You may begin.

DOMINIC AGOSTINO

Alderman Agostino: Thank you for the opportunity to make a presentation today.

I am very supportive of the bill that is in front of us. Speaking as a municipal councillor, we have tried and I guess we have looked at many ways of trying to come to grips with this problem, which is a growing problem not only in the city of Toronto. We know the incident which really brought forward this bill in Brantford. Also in the city of Hamilton we have had a number of incidents where imitation guns similar to those you see there and some of the stuff you have here have been used in the committing of crimes.

We have tried to address the issue at the municipal level. In Hamilton we are in the process of now passing a bylaw similar to the Toronto bylaw. In effect, it would prohibit the sale, manufacture and possession of these weapons, these replica handguns.

The difficulty at the municipal level is the fact that we can pass these bylaws, but we may not have the power–and I guess the courts will eventually determine that–to enforce these bylaws. We pass them under a section of the Municipal Act that is wide open, a similar section that Toronto used, which is section 104. If I can just briefly read it:

"Every council may pass such bylaws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this act as may be deemed expedient and are not contrary to law...." That is basically stretching in many ways, I think, the authority that we at the municipal councils have.

Therefore our bylaw, which we hope to be able to pass and go into effect for the spring of 1990, I am certain will be challenged in the courts as soon as we lay the first charge. There is obviously the possibility that the courts can throw this bylaw out and say we do not have the power at the local level to do that. That is the reason I am here, to urge the committee to seriously consider this bill.

There are problems that occur, we know, with these guns. You see the display there, you see what is here. They are very inexpensive. They are made to look alike. They are made with the intent to look like real weapons. They do not hide that at all. That is advertised; if you look at the back of the boxes, it is clearly advertised that these are imitation guns and they are meant to look and feel in many ways like the real handguns, and that is the problem.

We know the difficulties and I know the difficulties with private members' bills, but I hope on this particular issue that we look at the urgency of this, that we look at the need for this bill to be passed as quickly as possible. I understand the process that sometimes happens at this committee and at all levels of government where a private member's bill sometimes is a good bill, but things get delayed, get stalled, get put back and forth. Then later on, we get a new bill introduced by the government which is similar and in effect does the same thing, but at the same time delays and causes many difficulties.

I see the display there, but just to give you an idea, I had to go through the process to get some of these things put through. This is $17.99, picked up on a Saturday afternoon at a store in Hamilton: very cheap, very real-looking in my view. When you walk into a variety store, when you walk into a drugstore, when you walk into a bank with one of these, I do not think too many people are going to question or take a chance on

whether this thing is real or not. A police officer on the scene, of course, is not going to sit there and say: "Excuse me, is this real? Can you fire a sample shot and then we will see what happens?" They are a real danger.

Again, this is not expensive. There is a wooden handle here, the whole bit, for $17.99. These are $3.99. I was told not to fire caps in this, so I will not, but this thing fires the caps and smoke comes out. There is a little bit of a flame at the side, or the fire thing. The same thing, $4.99. You buy caps; I think you get 80 of them for 69 cents. This is $9.99, a little more real-looking, the same situation, very cheap and looks very real. Of course, these are the things that we do allow.

When we have a bylaw, I hope with a provincial bylaw, these are the kinds of things that are straightforward and obvious. People are saying, "What are you trying to do, ban guns from kids?" and that sort of thing. Generally, that is something a parent has to decide, whether the kid should be playing with a gun, but I do not see a problem with this type of thing. Clearly you can tell the difference between this and this, and you can see that this is what we should be banning and this is acceptable.

I think toy manufacturers are starting to see as well, on their own hopefully, that this is the pattern, the way to go, and they will make these types of things fluorescent, see-through, which are clearly distinguishable.

1540

I have had some discussion, and I know there are presentations later on from members of various police forces, with Chief Millar in our municipality. He is clearly in support of a bylaw or at least provincial legislation to cover these things. The chiefs of police have tried through the federal government many times and have been unsuccessful. From my discussion with our chief, obviously a federal law would be his first choice; that is not happening, so a provincial law is next. Ours is the least desirable alternative simply because it is probably the weakest to enforce.

I think the responsibility here clearly rests at the provincial level, since the federal government does not seem to have the guts or the courage or to see the necessity for this bill to be put through. I hope that at the provincial level our representatives are a little closer to the people than in the ivory towers of Ottawa and they will see this thing in a different light and see the need to act as quickly as possible.

I want to respectfully look at a couple of other suggestions to be included in the recommendations. Some of these may be looked at. From my reading of it, I see a reference to the selling of the guns; I do not see a reference to the possession of the weapons. Maybe that is something, if it is not there, that should be looked at as part of the legislation: that it is not only illegal to sell one of these but it is illegal to have one of these in your possession, because then it gives you a little more clout for the nut who goes out there and for $4 or $5 picks one of these up and wants to walk into a bank with it. You have at least a little more to go after them.

I think you can look at the issue again, because if you do not have possession being illegal and if you have legislation in Ontario, then someone can go to Quebec or to Buffalo, buy one of these, have it in Ontario, and it is perfectly legal because it was not bought here. Nobody gets charged for selling this thing. So I think that has to be looked at.

I think the same certificate of approval for the selling that has been suggested in this bill can be looked at for possession, because there are exemptions which have to be considered. I know in our own case, the people from the Hamilton Military Museum have approached us and said, "Can an exemption be made here?" People who teach law and security at Mohawk College have said: "We use some of these things for our programs. Will we be allowed exemptions?" So there are reasonable exemptions you can make. A minister's certificate could be used in that case.

I believe the penalties should be much stiffer than are looked at at this point. I would like to see, again for the committee to consider, at least a minimum of $1,000 for the first offence for individuals. For corporate I think $10,000 has to be the minimum. As we know from the Sunday store issue, corporations in many cases do not seem to take fines very seriously. With the money at their disposal, they can laugh at a $1,000 or $2,000 fine and it is not significant at all. So I hope that when this bill is passed, the fines are going to be much stiffer.

The definition, hopefully, will be expanded. Also, you should look at the whole issue of pellet guns, air-compressor guns, BB guns, those types of weapons, which are very easily accessible to the public and are used in the committing of crimes.

The other aspect is possibly the whole enforcement issue. I would like to see the committee also consider the possibility of allow-

ing municipalities the power, through their bylaw officers, to enforce these types of bylaws, because I know a lot of these things are going to be reacted to upon complaint. You are not going to have police officers walking through Eaton's or Sears or department stores or Toys R Us, looking at the gun shelves. So a lot of these will be on complaint, and on those complaint issues it may be easier for bylaw officers from the municipalities to respond and have the authority, which they would have to be given by the province of course, to charge individuals under this law. I would hope that is considered as well.

Just to wrap up and go for any questions, I personally hope, as I said earlier, that the committee will consider this in an expedient manner. You are never going to get rid of the problems, I realize. You are not going to get rid of the problem of people using guns in robberies, but it is much easier, as I said before, for a lunatic or any nut to walk into a store and pick up one of these for $5 than for that individual to try to get a real one through the underground network and everything else that they use.

So I want to commend Mr Farnan for bringing this forward and I hope the committee will look at this in a very serious manner, because I know at the municipal level we are quite concerned about this. Let's not wait and react when there is another killing that a police officer gets involved in or someone gets hurt as a result of it and then politically always you react to something happening. I urge the committee to look at taking some preventive action at this point, taking some leadership on this issue and setting a pattern that hopefully the federal government will be able to follow and eventually do something about across the country.

Mr Kormos: You raised the whole issue of pellet guns, BB guns, I guess spring operated as well as gas operated. I would expect that in so far as oftentimes they are indeed replicas of real guns, this legislation is designed to encompass them, but you expand that.

My understanding also is that some, but not necessarily all, pellet and BB guns will not be firearms pursuant to the Criminal Code, and that is to say the projectile velocity will not be sufficiently high to meet the threshold in the Criminal Code for a firearm definition. It remains then that virtually anybody at any given point in his life can own a BB gun or a pellet gun. I am digressing from the issue of replica itself.

Firearms are controlled and are patrolled in such a way that legitimate users of firearms are permitted to use them. Indeed, as we know, Nimrods and outdoors people of all ilk use them responsibly. What do you say about young people and pellet guns and BB guns? What types of controls, restrictions or thresholds would you consider appropriate, not so much from the point of view of their being replicas but from the point of view of their being potentially dangerous?

Alderman Agostino: The point of view along those lines is that we have to look again at the issue of how quickly you can get them and how easily they are available. Right now, you can pretty well walk into any Canadian Tire, I think, and pick up one of those things. I think there is a problem with that in itself. I would like to see that being included under the broad scope of this legislation. Again, if people want it, then they have to go through a process. They have to get a certificate, possibly from the minister, as to the reason they are using it and the legitimacy of that.

If somebody takes all that trouble, I have a feeling they are going to use it, you know, if they like hunting, as an example, or for whatever other purpose. But if it is a purpose that is clearly defined, I believe the chances of someone using it in the committing of a crime are probably slim or slimmer than someone just walking into Canadian Tire and picking something up and holding up a liquor store that evening. So I hope that that is looked at by the committee as well and that more than just imitation handguns will be looked at because they are potentially dangerous and can be used in the committing of an offence.

Miss Nicholas: I appreciate your bringing in your replicas and Mr Farnan for taking the time to bring his in, because I have not had an opportunity to view them all. I guess I do not frequent all these stores you gentlemen seem to go to on Saturday mornings, but it has been really helpful.

What I am grappling with in this bill is subsection 3(2), where Mr Farnan has provided for nonreplicas to be identified so that they can be sold. I am trying to find the definition of what a replica is that in some circumstances could be seen to be a real gun and in no circumstances ever look like a replica. I am interested in that little, green fluorescent one that you brought today–lime green I might even say; it is quite bright. You implied that this one would not, in your view, come within this bill.

I would be interested to hear what Mr Farnan says about that, but I even have some difficulty with someone making the decision that this gun is not a replica. What happens if one is used in my dimly lit alley and does not any longer look

fluorescent green but in fact looks dark? That too may be perceived to be a replica.

I am concerned about this person in the ministry who is going to make a decision that this is not a replica. Then what happens if, later, in fact it is involved in a shooting? I do not know whether it is an appropriate thing to put on a person, to decide that is not a replica and these are. These really do look very real. I can see how they could be mistaken by even an expert as to whether they are replicas, real or whatever, at this distance in this lighting, which is perceived to be fairly good lighting.

How can you come out and say this fluorescent green one is okay but these are not. What sort of drew you to that? And how do you feel about this magic person who is going to determine what is a replica and what is not?

1550

Alderman Agostino: The definition will have to be worked out. As an example, Toronto looked at its definition. Los Angeles also has a law in respect to that. In consultation with various police forces and so on, I believe you are going to be able to make a pretty good determination.

Again, there is no foolproof law. Any law must have a little bit of reasonableness and a little bit of common sense. Anybody can go in, pick up one of these things, spray paint it black and it no longer looks like a green fluorescent thing. I realize that. There are limits to everything. You are not going to pass legislation with a magic formula that is going to be foolproof and that is not going to cause any further problems, but I think it will greatly reduce the problem.

I have looked at these in the dark; I have intentionally shut off the lights and had someone hold this. You can see it is fluorescent, it is a bright colour, it is see-through. It is not the answer to all the problems but it is a step forward. For a law to work, people must see it as being a reasonable law and a law that makes sense, because if you pass an outrageous law, people will just discard it as something that is flaky and is useless and why even bother.

A little bit of common sense would have to take place in the decision-making process. There would be judgement calls in some cases, very close judgement calls. I do not think law is black and white; there are a lot of grey areas in there, and there would be in this as well. I think it would reduce the problems. It will not solve them all. Some people will take these and do things to them to make them look real. Someone can pretty well carve a gun out of wood if he is really skilled, and put a piece of tubing in to make it look real. How are you going to stop that? There is only so much that can happen, but it certainly will be an improvement over what we have now.

Miss Nicholas: That is my point. While we are taking the effort to improve it, how can we improve it even more? That is my question. It says, "closely resembles or might reasonably be mistaken for such a firearm." As you have indicated, if you did paint that black and it was in a very dimly lit circumstance, it might very well look real. My problem is this person at the Ministry of Consumer and Commercial Relations who is going to make a decision: "Yes, this is a replica. No, this is not."

We had Tom Jakobek here yesterday evening, and it was late in the evening so I may not be paraphrasing him correctly, but he said that when he initially thought of the Toronto bylaw, they did not include one of these guns, but now that he reconsiders, that has potential to be mistaken as a replica as well. You said they established a definition, but now they really wonder what it means. Would you like to be the person making the decision?

Alderman Agostino: I think it would have to be someone who had the expertise. I do not profess to be an expert in handguns. I have never fired a gun in my life. I do not really know what a real gun looks like, except for pictures and movies and this kind of thing. Most people are in the same situation. When somebody walks in, you do not know if this is real or not. Again, I go back to the point of being reasonable and doing something that is common sense. I use this as only an example. I have no major objections to this, but I think it could be perceived as being unreasonable, going a bit far and being a bit much. Again, you would have to be pretty out of it or pretty much in another world to think this is real and this is going to hurt you. You may get wet, but that is about the extent of it.

You have to draw a line somewhere with reasonableness. That decision has to be made by an expert, not by somebody you just pick off the street and say, "You make the decision." Somebody obviously has to know guns, has to know what real guns look like, has to know what fake guns are and everything else. It is not as easy decision for somebody to make. It is not somebody you just pick off the street and ask, "Can you make the choice now?" Obviously, it would be someone who had some skill and expertise in the area. The police obviously would play a good role in that because of their knowledge of the weapons they have seen, that

they have dealt with, that people have used. That will come in handy.

Miss Nicholas: Some of us would rather not do that.

The Vice-Chair: We have five minutes left and two more individuals.

Mr McGuinty: In speaking with your police officers, what do you think would be the practical consequences of this legislation regarding law enforcement in your area? What would be the results?

Alderman Agostino: If this legislation was passed?

Mr McGuinty: Yes.

Alderman Agostino: I think the major effect would be that, all of a sudden, stores would not be able to carry these. That would be the major effect it would have. As a positive point, the stores could not have this thing on their shelves and therefore it really cannot be purchased. That would take care of a big, big chunk of the problem. Obviously we would go in and maybe charge them with something else. We could lay a charge of possession now under the Criminal Code if somebody used one of these. In an offence, they could be charged as if it was a real gun, but at the same time there is no power to keep these things off the shelves.

That would be the major effect it would have on our local forces: the power and the authority to go in and if the stores do not clear the shelves, the police can charge them or charge individuals who are selling these.

Mr McGuinty: You have commented on the can-of-worms situation wherein somebody would be required to distinguish between what can be considered a gun replica or a toy gun and you refer to the kind of expertise that is necessary in that regard. I find it difficult to understand what kind of expertise we could draw upon, because what that expert would be considering is not merely looking at replicas like those, which clearly, even to the untrained eye such as my own, appear to be very real. The expert would have to determine the probability that a policeman, perhaps in a dark alley in a very tense situation, would perceive one of these toys, or what had been approved as a toy, to be a real gun. That is the kind of expertise somebody would be called upon to determine.

I really do not know. I am not casting dispersions upon the legislation, but we are opening a can of worms there which I do not know how it would be resolved. When you get to the business of definition, our bill does not define "firearm," but the Criminal Code does. It means any barrelled weapon–I presume if you cut the barrel off it it is no longer a firearm–from which any shot, bullet or other missile can be discharged that is capable of causing serious bodily injury or death to a person.

When you go to the New York state legislation, under "imitation weapon," it refers to that which could be perceived to be an actual firearm or an air rifle or a pellet gun or a BB gun. I see that this legal inability to define this in terms of common sense is not something limited to Canada. I see the same kind of nonsense here in New York state. They consider an air rifle, a pellet gun and a BB gun–something we do not allude to at all here–as having the same status as an actual firearm. That is another mystifying aspect of this that somehow beguiles me, if not confuses me.

The Vice-Chair: Mr McGuinty, I must ask that you be a little bit briefer. We have one more member who would like to ask a question.

Mr McGuinty: Okay. There is a principle here, an old principle, that that government is best that governs least, and what we have here in effect is government intruding into the definition of what is a toy. I can visualize a constable going into a day nursery and seeing some little waif packing a toy gun in his hip and he checks him out to see whether or not he has a licence for it. There is that aspect of it as well. I am not disputing the validity of the main thrust of this, but I find these other aspects of it amusing as well as confusing.

That is an observation. I do not know what the hell it is worth, but it is kind of a catharsis.

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Alderman Agostino: Just a brief thought on the point about the government involvement in whether they are toys are not. These things were around 15 or 20 years ago, but people were not being stupid enough to pick one of these things up and walk into a grocery store. Government has to react to the problems that are occurring in society. Government cannot just say, "These are toys and therefore it's not our job."

You have to respond. You have to respond to changes in society and you have to respond particularly to the criminal mind that is out there putting not only the lives of the police officers at risk, but people around. The responsible thing for a government to do is to react when problems occur rather than to sit back and say: "It will take care of itself. We have no involvement." At least government can react. With all due respect, I do not agree with that philosophy.

Mr Farnan: I have a couple of comments to make. First of all, I want to thank you for bringing the bright green toy. This is the first time the committee as a whole has looked at the difference between the replica toy and something that would be easily distinguishable.

One of the roadblocks that I hear members talking about when we address this issue is, who is going to decide. That poor, unfortunate bureaucrat somewhere in the netherlands of Queen's Park will have to be sitting there with this onerous responsibility. In actual fact, the responsibility will, to some extent, fall with this committee, and more significantly with whatever recommendation would go to the House, because in fact there would be definitions. We would have to sit down and say, "Hey, look."

What strikes me as interesting is the legal counsel I received when we were putting together the package. The definition is almost identical to Detroit, where it says "might reasonably be perceived to be real firearms." It goes on, at the bottom of that page, to talk about "distinct colour, exaggerated size or permanently affixed international blaze orange markings," etc. So indeed, all one could hope to do is legislate what the exemption would be in terms of what would be considered acceptable.

There is no reason why we would not, for example, in defining that definition, in my view, go to the people whose lives are most at risk and say to police officers, "Tell us the kinds of things that should be acceptable and tell us the kinds of things that are unacceptable."

Again, I do not think we can ever solve the problem that Miss Nicholas has, and I think we all have, of what about that toy gun in a dark alley. In a dark alley and under certain circumstances, a sudden movement with any object in an individual's hands can be perceived by a police officer to be a real weapon; it could be a flashlight; it could be anything; but a sudden movement in a tense situation means an individual has to make a decision on whether or not his or her own life is at stake.

We must not flinch in terms of courage in addressing the issue because we cannot draw the perfect bill. I do not think we should say, "Hey, we can't do it," but I do think we could go to those people who are most seriously affected–the police associations, the police brotherhoods, the commissioners of police–and say, "Help us with the definition of this." Then I think the bureaucrats could look at that definition and say: "Hey, this gun fits into this category. It has been generally approved as being acceptable as a toy by police associations in terms of consultation."

I think that is as far as we can go and even still, at some stage, a yellow, brightly lit, orange gun will be used and there might be a tragic incident with that because it is in a dark situation or whatever. There is nothing anybody can do to mitigate against that extraordinary circumstance. What we can do is actually provide a great measure of reduction of availability.

I think your comments in terms of possession were very well made, and there was the whole point you were making in terms of different municipalities and maybe different bylaws in different areas. There will still be areas that do not have a bylaw, and then there is the whole issue of whether it is within the frame of reference of this. I want to thank you very much for taking the time to come and make your fine presentation to the committee.

The Vice-Chair: Mr Agostino, on behalf of the committee I would like to thank you for making your presentation.

I would like to remind members of the committee that I granted a bit of leeway with respect to this presentation. I remind members that when we have witnesses before us the time is for questions and not for making statements, so I would appreciate that with further presentations the questions be made to the witnesses. We will have ample time to discuss the principles or philosophy behind this bill later.

With the indulgence of the next presenters, who are from the Ontario Provincial Police Association, I would like to advise Mr Kormos that we do have legislative counsel before us today. You had a number of questions with respect to the Criminal Code of Canada. Perhaps we could take the next three minutes for you to have those questions answered, and then we will have our next presenters.

Mr Kormos: Okay. It is my understanding that if a person–

Mr Kanter: On a point of order, if I might, Mr Chairman: I appreciate there may be some fair, legitimate questions and they may have been put yesterday, but we do have a number of deputants before us. We are running a little late now. In deference to the deputants, I wonder if we might not hear from them first and then perhaps afterwards hear the legal questions.

The Vice-Chair: Mr Kanter, it is either having legislative counsel stay with us all day or having the deputants wait an extra three minutes, and I am exercising the discretion of the chair.

Mr Kanter: If you can really limit it to three, okay. It has been my experience that on occasion those three minutes–

The Vice-Chair: We will try to do that. Thank you.

Mr Kormos: That used up 45 seconds right there; not atypical, in any event.

We had some problems yesterday because my proposition–

Mr Dietsch: You just wasted another five.

Mr Kormos: Listen, Mr Dietsch–

The Vice-Chair: Can we have the questions, please.

Mr Kormos: My proposition was that a person who uses a gun in the commission of an indictable offence is then subject to extra sanctions, and that is to say a minimum one-year consecutive sentence, but if that person does not use a real gun, rather uses a replica or imitation gun, then he or she is not subjected to that additional sanction in addition to the indictable offence, be it robbery, be it sexual assault, what have you. That was my understanding; some of the people who made submissions yesterday had different understandings, and that is why I asked you to have legislative counsel come to clear up that little matter.

Ms Baldwin: I will very briefly preface my remarks by saying I am not a criminal law expert, but I have looked at the Criminal Code recently and I can report as follows: section 85 of the code does provide that "everyone who uses a firearm (a) while committing or attempting to commit an indictable offence or (b) during his flight after committing or attempting to commit an indictable offence, whether or not he causes or means to cause bodily harm...is guilty of an indictable offence...." I believe that is the provision you are referring to.

Mr Kormos: You got it.

Ms Baldwin: That provision requires the use of a firearm. By definition in this bill, a gun replica is not a firearm, and even looking at the definition of firearm, that is dealing with something that actually can cause someone bodily harm or death. There is, of course, another provision in the Criminal Code which is somewhat related but does not directly answer your question, which says, "Everyone who carries or has in his possession a weapon or imitation thereof, for a purpose dangerous to the public peace or for the purpose of committing an offence, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding 10 years."

Mr Kanter: Excuse me. Is that in section 85?

Ms Baldwin: No, that is section 87.

The Vice-Chair: Are you satisfied with that?

Mr Kormos: It is not a matter of being satisfied or dissatisfied. I am glad it is clarified.

The Vice-Chair: Are you satisfied with the response?

Mr Kormos: Yes. I thank legislative counsel. She says she is not an expert in criminal law, but it appears that she is.

The Vice-Chair: I would like at this point to welcome the Ontario Provincial Police Association. We have before us Tom Fendley, who is the executive officer and Larry Strange, who is the director.

Gentlemen, the next 30 minutes are yours. We would appreciate it if you left at least 10 minutes for members of the committee to ask questions, preferably longer if you could, as you see that questions generally go past the time allocated. The time is yours.

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ONTARIO PROVINCIAL POLICE ASSOCIATION

Mr Strange: I would just like to open by saying that I want to thank everyone here on the committee for allowing Mr Fendley and me to be here today and to make this presentation before you. Afterwards, we would be more than happy to try to answer any of your questions and concerns. I would now like to turn it over to Tom Fendley.

Mr Fendley: I will be brief, but I would like you to look at this bill from a police perspective and consider the officer on the street.

Shoot. Don't shoot. You have just a split second to decide. It is either (a) you were too slow and perhaps fatally shot by an aggressive criminal or (b) you reacted, striking a suspect in the chest. Down he goes to the ground. You approach the suspect to determine his injuries only to find out that he does not have a handgun. He does not have a firearm as defined, only a replica. Ladies and gentlemen, these are real-life scenarios that our police officers face.

I am here today to represent 4,500 members of the Ontario Provincial Police Association. Needless to say, our members have a real concern about the availability of replicas. We know the danger they represent and we know of incidents where people have been shot. I am not about to go through those incidents here today. I am sure you are aware of some of them. There are a few that we are very familiar with and there are in fact

hundreds of cases to the south of us that we can learn by.

These replicas, as you can see by the examples before you, are certainly designed to look like guns. There should be no doubt in anybody's mind and in fact some of them are designed to act like guns. In a package in a store, priced at $5, $7 or $9, it may appear as a toy by looking at the packaging. But as you can see on the board, once they are removed from that package, you are looking at reality. There is nothing to prevent these replicas from being used indiscriminately. You or I or an innocent corner store employee have no way of knowing whether that gun is in fact real or a replica, and believe me, you only have to look down the wrong end once.

Policemen and policewomen in this province are not trigger-happy officers, but real people who have to make a split-second decision. We can examine these incidents. We can look back at this occurrence here today, in a court of law or at an inquest. We can deliberate for hours, days and perhaps weeks, but keep in mind that the officer on the road had to make a split-second decision.

The last thing I want you to consider is the value and the use of these replicas. These imitation firearms obviously have no real value and I suggest to you have no legitimate use in our society. We now have gun control in this country, something we worked very hard to get, to control the sale and distribution of firearms. Let's not overlook these replicas.

As I started out by saying, let's consider the police officer on the street. These men and women are hired by our province to provide quality of life so that you and I and our families can enjoy the communities we live in. Police work is a very challenging yet demanding profession. Let's not make it any more difficult than it already is. We urge you to tighten this up.

On behalf of the 4,500 members of the Ontario Provincial Police Association, I urge you to prohibit the sale of replica guns, as proposed in Bill 145.

The Vice-Chair: We have questions from members of the committee. The first is Mr Kanter.

Mr Kanter: Mr Fendley, I appreciate your concerns, particularly from the police perspective, about banning these replica guns. I have a couple of questions about jurisdiction. They are not intended to disagree with the intent of the bill, but do you think that this kind of prescription, some of the provisions we have just heard, would better be done at the federal level in the Criminal Code or at the provincial level? Does it make any difference?

Mr Fendley: I certainly think it is a start provincially, but when you look at the example given by the speaker before me, as one being purchased outside of the province and being brought into our province, if we strictly went with the sale and we did not consider the possession, which was raised earlier, then I have a concern.

Mr Kanter: I am sorry. Could you expand on that? You have a concern in what sense?

Mr Fendley: The purchase could be made outside of the province of Ontario, but he could still have possession within the province of Ontario.

Mr Kanter: So you are suggesting that the bill would be strengthened if possession were added to it. Is that what you are suggesting?

Mr Fendley: Yes.

Mr Kanter: When we are talking about things like possession of replica firearms in this case, is that not pretty close to the kind of stuff that is covered in the Criminal Code rather than provincial consumer and commercial protection?

Mr Fendley: Pretty close. I am not sure what you are getting at.

Mr Kanter: There were some provisions of the Criminal Code that were read to us, and I have asked that they be distributed. I understand that it is an offence in the Criminal Code to possess or carry an imitation weapon for a purpose dangerous to public peace. I understand that is part of the Criminal Code and I am just wondering whether this does not relate more closely to that area of federal jurisdiction rather than provincial consumer and commercial legislation.

Mr Fendley: In the Criminal Code it defines "carried for a purpose," as you just read to me. The distinction there would just be for possession under this bill, possession and the sale.

Mr Kanter: The other area of question–let's suppose that the majority of members in this committee conclude that it is properly within provincial jurisdiction. You obviously have some expertise as a police officer or a member of an organization representing police officers about replica and toy guns and the distinction between them. Do you feel that police officers should be involved in the determination, or should it be left to what we will call a civilian employee of the Ministry of Consumer and Commercial Relations?

Mr Fendley: I certainly think the police may be able to assist you on that matter, but I would think that common sense should prevail and the distinction should be very clear between a toy and an actual firearm.

Mr Kanter: Of the weapons we have seen here today, I have not too much difficulty with, let's say, the green fluorescent number and the other one that the gentleman had from the city of Hamilton. But one I think was a kind of cap gun or cap pistol. Would you not agree that there would be some difficult judgement calls on the part of whoever has to make that decision?

Mr Fendley: That could come under the controls of the marketing of that product. I talked earlier about some of the bright-coloured packaging. Once the firearm is in that package, it may appear as a toy but when removed from that package, who is to decide whether it is real or a replica? If there is restriction on the toys as far as colours and design go, particularly colour, I think it was fairly obvious to everyone here that a bright green, purple or red firearm would be very clearly distinguishable from an actual firearm.

Mr Kanter: Finally, who should ultimately make the decision in your view? What kind of person should we look to to make the decision as to whether it is a weapon or not?

Mr Fendley: I think a civilian body can make that decision. I suggest we could offer you some assistance.

Mr Farnan: I think Mr Kanter has asked basically the questions I was going to pursue and so I am going to pass. I just want to thank you for what I felt was an extraordinary, powerful presentation. I think the way you have presented this, you could not have placed us in a better position to understand the way a police officer would feel, given a set of circumstances. I think it was an extremely well done presentation.

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Mr Dietsch: If I understand the presenter correctly, and I would like you to correct me if I am not understanding it the way you intended, you feel that there should be a total ban on all gun replicas, with the exception of those that are very distinguished and clear, whether that be by colour or some other method. Am I correct in that?

Mr Fendley: I think there should be a very clear distinction between a firearm and a toy. Anything that falls under the description of a replica, as I suggested, has no real value and no real use in society.

Mr Dietsch: When we are looking at the licensing body, real guns are licensed by the federal government, as I understand. I would like to have a little bit more of your input in trying to determine if it is an appropriate opportunity for the province to make those regulations or whether we in fact should be doing what we can but insisting that the kinds of laws we are looking for be put on a national basis. I would just like to have your comments on that once again.

Mr Fendley: I suggest it is a very appropriate lead for the province to take and perhaps it would be looked at federally.

Mr Dietsch: What about licensing for real

no way should there be licensing. I am thinking now in terms of those individuals who perhaps collect firearms. You are suggesting that that not be permitted. I am talking about replica firearms, like they collect toy cars and all those other things. That, in your opinion, would be banned, would it?

Mr Fendley: I would say that should be banned, yes. If you are a collector of firearms, that is certainly a different matter and you have to go through proper channels to get the authorization, the acquisition certificate to possess those firearms. I think that is very clear, but as far as replicas are concerned, they probably should be banned outright.

Mr Dietsch: I want to ask you one last question with respect to enforcement. Assuming that this piece of legislation is adopted, who in your opinion is the individual or the body of individuals who would be best suited to enforce this kind of thing? Most of the laws that are developed are enforced by the police departments to a large degree.

Mr Fendley: Are you suggesting a police officers' level as opposed to a municipal bylaw enforcement?

Mr Dietsch: That is what I am asking you. I want to know what you feel about it.

Mr Fendley: I would suggest very clearly at the police officers' level.

Mr Dietsch: That the police officers enforce. Okay. Obviously, it would require more manpower to enforce that kind of thing.

Mr Fendley: On the manpower situation, once the legislation is in place, it is just in the course of your duty.

Mr Kormos: I suspect you are talking about that type of replica, the toy, the plastic. Yesterday we saw a photograph of what was a

pretty sophisticated replica, one which simulated a real handgun to the point of the markings and the serial numbers, one about which we were told that an experienced police officer would have to spend at least a little bit of time examining before he could determine that it was only a replica, but certainly a very authentic replica. Obviously, one of the markets for these is kids. Kids might be inclined to play with these things as well as people who might be inclined, as we all agree, to use them in the commission of crimes.

You say there is no utility to these. You say there is no real value and no legitimate use. I just want to throw this into the hopper as well. I suspect that gun enthusiasts would be disinclined to have their kids play with these types of toys because you would want your kid to understand that guns are serious business and that you do not play with them, even when they are made of plastic, and that you treat them as real things.

If you were a real gun enthusiast, you would want your kid to learn how to use firearms, to learn how to store them and to learn safety techniques, but you would expect a young person to use real firearms and not toys. What have you got to say about that? There are going to be people who will say: "You have to be kidding. You mean my kid is not going to be permitted to play with his toy gun in the backyard, shooting whatever real or imaginary demons are occupying that backyard?"

Mr Fendley: I would suggest that a sincere gun collector is a conscientious individual who follows the law, first of all, in obtaining the weapon and the storage, separating the ammunition from the weapon when it is stored, a very conscientious individual. To take that one step further, his children, whether sons or daughters, would have reinforcement as well as to the danger of firearms.

I think if we make a distinction with a replica and a real weapon to separate that from a toy—and I am suggesting marketing as far as colour and somewhat controlling the design—if a child wishes to play with a firearm in the backyard, does it really matter to that child whether that gun is bright green as we saw here today, or an exact replica of a .45-calibre? I suggest a child is playing in child's play.

Mr Kormos: What type of impact do you think that has? You are surely aware of incidents and I know your colleague with you is aware of incidents, where youngsters, very young children, have injured themselves and other very young children with real firearms to which they have obtained access with the apparent perception on their part that this is but a toy.

Quite frankly, I know of some instances in the Niagara Peninsula where that type of phenomenon occurred. Can you relate that to the marketing of this type of very realistic toy gun? Do you think this sort of blurs the distinction between what is a toy gun and what is a real gun, what is imaginary injury and what is real injury from a discharged firearm?

Would you buy your kid this type of gun to play with?

Mr Fendley: I certainly would not. I think the distinction would be very clear to a child and the message would be very clear if there was a distinction between a weapon and a toy, and not all these replicas in between.

Mr Strange: After 19 years as a police officer, I think the bottom line is that if somebody approached me with one of these weapons, I would revert to my training, which is to fire. I can tell you without a shadow of a doubt, as a police officer, I would have trouble distinguishing between that and a real weapon. I first started firing weapons at the age of 14 years and I would have difficulty being confronted with a weapon like that.

Mr Neumann: Thank you very much for your presentation. I was taken with the opening where you said: "Shoot. Don't shoot. You have just a split second to decide." That is exactly what happened in Brantford where the incident occurred. Then a police officer has to live with what has happened.

How frequently is an officer confronted with this kind of situation where a replica of a gun is involved?

Mr Fendley: I tried to get statistics and it is difficult to come up with some accurate statistics on how often a replica gun is used. Of course, if the suspect is caught later and the weapon is never found, it is easiest to say that it was a replica when he is arrested. So I do not have any real statistics on how often replicas are used as opposed to actual firearms.

Mr Neumann: When you came here and said you represent 4,000 or 5,000 police officers across Ontario, is this something that your association has discussed as an organization and made the determination?

Mr Fendley: We are interested, certainly, in the safety and health of our members. This is one issue that is very important to us. Yes, it was discussed as a board. I was elected to represent the board here today and make our point.

Mr Neumann: Is it something that you would say is of general concern to police officers across Ontario? Are they aware of the inquest that occurred in Brantford and the bill which my colleague Mr Farnan has presented here?

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Mr Fendley: I would suggest they are very aware of it. We try to communicate this to them, as members of an association, in a monthly newsletter. It is our job to keep the members informed of what is going on, what they are facing, and yes, we try to keep them on top of all incidents like this.

Mr Strange: Could I go back to your earlier question, just to make a comment? In relation to how often replicas would be used, I would just like to point out that I think they are a lot more available than real firearms. Without getting into trying to nail it down, I think you are going to see a lot more of them out there than you are actually going to see firearms. That is the problem.

Mr Neumann: Do you think that someone who is new in the criminal business would tend to opt for this choice more frequently because there are fewer obstacles to overcome?

Mr Strange: Exactly. If you have that knowledge and if you know what the Criminal Code provides for, I think it is a better and easier method of access than going out to try to find an actual firearm on the black market or wherever, or stealing one, which is similar to breaking and entering and stealing one. I think my position would be that they would be a lot easier to find and for that reason I believe they are used more often.

Mr Neumann: I am not a voting member of this committee, but I would urge that the committee give this very serious consideration and find a way to do something about it.

The Vice-Chair: Perhaps when we go through clause-by-clause you can aid us in our deliberations then.

Mr Fendley: If I just could clarify one further point to your question, the majority of crimes, we will find from statements given by the accused, are crimes of opportunity. The opportunity certainly presents itself when you can pick up a firearm at a corner store or department store at prices suggested here today as anywhere from $5 to $9, as opposed to a criminal's trying to get the funds together to purchase a weapon on the black market on the street. The opportunity presents itself with the availability of these replicas.

Mr McGuinty: The more I read about this, and I think I am going to stop reading, the more I become confused. I have read Bill 142; I have read our own Criminal Code definition of a firearm; I am into the New York definition; and now I have in front of me those of Detroit and Los Angeles. We have the distinctions made in various terms between firearms, replicas and toys, and I suspect I am going to go on to read about an instrument that is a firearm that has only replica ammunition in it. That might be the next thing we will be concerned with.

But I think the officer made the most thoughtful and, to my mind, the most meaningful statement I have heard or read about this whole issue, and you do not even live in my constituency, so I can say this honestly. It really clarified my thinking and simplified it.

There is a firearm and there is a toy and what comes in between serves no useful purpose in our society. I think that really clarifies it.

It does not resolve the problem of how you distinguish between a replica and a toy, that is something I presume your professional expertise could be drawn upon to help the bureaucrats and certainly the politicians to define, but I think that is exactly the way to look at it: There is a firearm and there is a toy. As for anything in between, as my mother would say, "The person who has anything in between is up to devilment and has no damned business having it."

I really appreciate the clarifications here.

Mr Dietsch: I have one final question that has come to mind as a result of some of the questioning and what not, and that is in relation to the law. The bill comes into effect on the day it receives royal assent, but that leaves me to ask a question about who knows how many hundreds of thousands of replicas are out there in the marketplace right now. How does one go about enforcing the cleanup of that particular area? They might be used in some staged crime. I would like to get your feelings on that, because that presents a very big challenge to hundreds of thousands of people.

Mr Fendley: That is a time factor, just as the gun control legislation was when it was passed. By passing a bill of this nature, we are providing a better society for our children for the future. It is going to take time to get these weapons off the street; there is no doubt about it. It is a time factor.

Mr Dietsch: So you envision that it will come into effect the same way.

Let me ask you another very pointed question about the crimes that are committed as a result of using a replica. No one in a confrontation with a replica gets injured, shall we say. However, for

those individuals who are of that state of mind who are going to engage in that crime in any event, do we now get into crime that is going to be staged with real guns? I guess that is a concern that lies on the other side.

In other words, if it is a robbery and an individual is taking part in a robbery and it is with a replica, presumably he cannot shoot the person. However, if the person is really intent on robbing someone and he now takes up a real gun and does it, because you can buy those on the black market, as you well know, do we encourage perhaps more injury the other way? I would like to have your feedback on that.

Mr Fendley: Using your example there of a robbery, I would take you back to my comment over here on crime.

Mr Dietsch: Rule out police officers. I am talking about a robbery between a store clerk and an individual.

Mr Fendley: As I said, crimes are more often than not committed because the opportunity is there. In your example of a robbery, somebody is committing a robbery generally because he is trying to raise cash. They have a dope habit they are trying to feed or whatever and they are trying to raise cash. They do not have cash to co-ordinate that. It is an opportunity. They are creating that opportunity. Having these guns available, even though they are only replicas, at the prices they are available at, gives them that opportunity.

I do not think we are going to convert these criminals into purchasing firearms and committing the same offences. We have gun control now to control firearms. You are not going to control it 100 per cent, but you are reducing that opportunity.

Mr Sola: I would like to carry on from what Mr Dietsch has said regarding the retroactivity. Would you try to enforce the law retroactively? I am thinking of the little kid who has his favourite six-shooter or something. If it is one of those types of guns, it would be a little bit difficult to explain to him, "As of today, the law has changed and your favourite toy is now a criminal weapon." How would we go about enforcing that?

Mr Fendley: What I see happening is very similar to what happened when the gun control legislation came in and the public became aware. It was a public education process and a number of firearms that the wives and families did not want to have available were just turned into the offices across the province. They knew gun control was in effect and they turned them into the offices.

I would suggest, first of all, it would be a public education to educate the parents. We would have a lot of them destroyed or turned in. A certain amount of them would be picked up, as I said, over time. In executing search warrants you may come across these items. It is a time process.

Mr Sola: I am sorry that the cameraman has left, but when I noticed him, to my untrained eye, he seemed to be dressed in army fatigues. That belt that he carried could have been an ammunition belt or a grenade belt, for all I know. If he was covering the beat and happened to be running into a darkly lit alley with a police officer who was going after somebody who was similarly dressed, that camera could, under difficult lighting, look like a gun as well. Is there not some discretion involved concerning circumstance and everything else, the right time, the right place, in all situations, including replica guns?

Mr Fendley: I think we can create all kinds of scenarios. You refer to the dark alley, and it has been referred to here earlier today.

Miss Nicholas: Dimly lit.

Mr Fendley: Dimly lit, sorry.

It is always a very difficult situation. It is very difficult to say how you are going to react unless you are put in that situation, depending on how much light there is, what way you entered that alley or what cover is available to the officer at the time.

1640

But when you look at that from the other side of the coin, if someone is in that dimly lit or dark alley and is in possession of a weapon, what is his intent? Why are they there? Are they up to good or are they up to no good?

Mr Sola: In the case of our cameraman, he would be doing his job.

I agree with the statement you made earlier that crime is often the result of opportunity so cutting down the opportunity of having what appears to be an offensive weapon is a good thing, but I am also a little bit concerned about reaction to certain circumstances that inevitably will occur.

I mean, if the cameraman happened to be shot on location at the scene of a crime because he happened to be dressed the wrong way and pointing his camera at a certain person, would we try to legislate against the media covering the

police beat? I am wondering if we are sort of going a little bit overboard in this situation.

Mr Fendley: No, I think common sense has to prevail, and we cannot define every situation. There is no hard and fast, black and white distinction. You can take a fluorescent green water gun, obviously a toy, and it could be distorted or changed by being painted black, as we suggested earlier, so there will always be variables.

Mr Strange: The only comment I would like to make in relation to it is that I think I would like to clarify something in that. When you talk about dark or dimly lit alleys, I have found over my years of training that they have upgraded it to where you do not chase down a dark alley behind somebody with a firearm, you go to your resources that are available.

An example of this is that a police officer in North Bay who was confronted by somebody with a shotgun chased him down a dark alley, and as he was walking past the individual with the gun, the police officer was shot in the back. Because of those scenarios, they have upgraded our training so the days are gone where you chase down the alley after somebody because you think he has a gun. I think that needs to be said. There are different training methods employed today than there were 10 years ago.

The Vice-Chair: On behalf of the committee, I would like to thank the Ontario Provincial Police Association, particularly Tom Fendley and Larry Strange, for coming today and sharing your thoughts with us.

The next presenters are from the Niagara Region Police Association. Doug Allan is the director. Mr Allan is joined by David Griffen, who is the director of the Police Association of Ontario.

Gentlemen, I understand you have been following the procedures, so you are aware that we are allocating approximately 30 minutes to hear your presentation and we would appreciate your leaving some time for committee members to ask some questions. The time is your's.

NIAGARA REGION POLICE ASSOCIATION

Mr Allan: My name is Doug Allan. I am a police constable with the Niagara Regional Police Force and I have 13 years experience in that position. I am currently assigned to uniform duties in the form of patrol duties in the city of St Catharines.

Mr Dietsch: Great place.

Mr Allan: Thank you, we agree.

I am also elected as a director on the Niagara Region Police Association. I am here today representing the 546 police officers of that association and the 201 civilian full-time and part-time employees. The Niagara Regional Police Force does the municipal policing for the Niagara region, which has a population of approximately 370,000.

At a general meeting of the association on 7 February 1989 a motion was unanimously passed and the motion read as follows:

"That a resolution be adopted by the 747 members of the Niagara Region Police Association to support Bill 145, An Act to prohibit the Sale of Gun Replicas."

This bill was discussed extensively on the floor and every member agreed that this is a problem that police now face.

The police also face the problem of how to deal with a situation where there are replica guns. Generally, there are two categories which these types of instances occur in. One is a premeditated crime where a gun replica is meant to be used to commit a crime. Examples of these would be a robbery, an assault for revenge on someone or intimidating someone the person knows. These crimes will take place no matter what laws you put in and the present federal laws are in place to look after such crimes.

These types of instances would include the dimly lit alley instance. There is a situation where a person runs in an alley with a replica gun. Again, they are up to no good. A kid does not play in a dimly lit alley. The police are there for a reason, the reason probably being that someone has called about a gun, a break-in or something, and they are going to chase after him and see a firearm.

There is no fear of these criminals using a real gun in these corner store robberies. If they are going to use a real gun, they are going to use it in today's present situation whether this law is in effect or not, but they look under the Criminal Code where there is an extended punishment. Once you are convicted of the robbery charge you are also convicted, I believe, under section 85 of the Criminal Code of using a firearm during an offence. If the accused can prove that it was not a firearm and was a replica, that section does not apply because it is not a firearm.

The second instance that probably concerns us most is a momentary incident where a person has not put any thought into the actions he takes. An example of this which we have run into quite often would be youths or young adults who are either in a car pointing the gun out of the car

window at someone else driving down the street or at a pedestrian. These people identify the gun as a black barrel with handles. The person is probably old enough that the victim says, "My God, that might have been a real gun," and calls the police. The police are put in a situation in that instance where we have to track down the car and approach the house in a very cautious manner, because we cannot determine whether a real gun has been used or what is going on.

Another one that we always fear is, you know, you have a toy replica gun. Dad has gone out and bought his son a toy replica gun. Later that night there is a domestic dispute where the mother calls the police and we walk in. The father could very well pick up that gun on a momentary thought and say, "Get out of here." Then we have got a criminal offence, and we might have a fatality, because we do not know what that gun is by looking at it. If he picked up something similar to this green water pistol, we would know right away no deadly force is required in this instance.

Then we also have the situation of, what do police do when confronted by a youth or probably a retarded adult who points a replica gun? These guns are available and that is a situation you are going to run into, because these people are immature and they do not know what they are doing. The police officer has to decide whether to take that grave chance that it is not a real firearm or he will be shot, or does he use deadly force? That is a split-second decision, as our friends from the OPPA have said.

A police shooting in the community involving a replica gun has a much greater effect on a police officer and the community than, say, a fatal car accident. Post-shooting trauma is just much greater on a police officer. It is intense at the best of times, but when he finds out it is a replica gun, it is going to be hard to live with. Although he was justified in everything else, it is just hard to justify in his own mind. Maybe he could have recognized it as a toy gun. We are not against the sale of toy guns, but make them look like toys through their colour and design.

1650

I heard yesterday about replica guns being sold by licence. As far as I am concerned, I cannot object to replica guns being sold by licence and/or permit for a lawful purpose such as the entertainment field, which we have in Toronto. The Criminal Code does not cover replica guns as firearms, but it does cover their use in robberies, assaults and purposes dangerous to the public peace, as we have heard today. However, in these cases the imitation gun must be perceived by the victim as a real gun.

If someone walks in with a green plastic gun to rob a store he is not considered–he is just stealing. He is not committing a robbery unless he threatens an assault. That gun cannot shoot a person. It is obvious to everybody that the gun could not shoot a person.

There seem to have been some problems in the definitions section in this bill. It has to be left fairly well open to a person examining these guns. Replica guns are guns that are similar to real guns in design and colour. Toy guns are guns that are obviously distinguishable from a real gun by their design and colour and are made for amusement purposes. That could be the general definition read into what is there. It has to be obvious. This bill takes a commonsense approach to the problem that can and will have fatal results if no action is taken.

POLICE ASSOCIATION OF ONTARIO

Mr Griffen: My name is David Griffen. I am a director with the Police Association of Ontario. Our organization is the parent body for the police associations across this province and we represent approximately 16,000 police officers. We had a quarterly meeting of our executive board last week. The representatives there represent all the police associations in Ontario. Our membership, without reservations, supports Bill 145.

I am before you today as a police officer. I am not an expert in firearms. Quite candidly, I would not know if those guns on the wall there were firearms or not unless I had an opportunity to make a close examination of them. The police officers in this province and indeed in the country are charged with the responsibility, if required, of using deadly force. We do not take that responsibility lightly. We also expect that our elected representatives are going to take every consideration to ensure that we do not have to find ourselves in a situation that could be tragic.

If a person points a toy gun at a police officer in a dark alley, we can only assume he has some form of criminal intent. We can debate all day whether or not it is a toy gun or a replica gun, but at that point in time the officer must deal with the situation and can only assume his life is in danger.

In this country we are perhaps stepchildren of our neighbours in the United States. We watch their television, play with their toys, and yes, find many of their weapons on our streets. Many real handguns at first glimpse may look like toys. It is not uncommon in the United States to have

small, legitimate handguns that can be concealed in a woman's purse. In the United States they look at the right to bear arms as a constitutional right, but I believe our forefathers did not, and our people today do not necessarily support that right.

Really, it is the profit-oriented marketing of toys designed and advertised to look like originals that is at issue here today. As our colleague Mr Fendley pointed out, is there any real legitimate use for those toys? I do not think our children are too concerned whether it is an identical replica of a .45 handgun.

I would like to respond to a few points that have been brought up since I have been here. I think Mr Agostino made a very good point earlier today that, yes, the municipal bylaw enforcement people should have an opportunity to enforce this bylaw as well. As I am sure you are all aware, your municipal and provincial police forces are strapped for manpower. There are many duties and responsibilities that have been brought to them. If we could engage the assistance of those people in enforcing such legislation, then I think that is a very wise recommendation on his part.

The concern that a criminal might resort to a real weapon if replicas are not available, I would suggest is not realistic. I think that as Mr Fendley pointed out the crimes on our streets are normally crimes of opportunity. The fellow who wants to rob a local convenience store or gas store to get some money, perhaps to purchase drugs, is going to seize whatever weapon is available to him at that time.

I do not think we can solve all the problems in this community or in this province or expect that we are going to solve all those problems, but certainly Bill 145 is a step in the right direction.

In closing, I would just like to relate a short story of an incident that happened in Mississauga not too long ago. A police officer was driving down Dixie Road just south of Highway 401 on a Friday evening at about 9 pm. He saw an older model car travelling. The passenger window opened and an arm came out the window with what appeared to be, at that time, a handgun. The person every once in a while made a gesture, as I am, as if indicating that he was firing.

The police officer was immediately behind the car. He could see four people in that vehicle but it was dark. The street was lit but the interior of the vehicle was dark. He could not make out if there were four men, four women or who those people were. The officer radioed in for assistance and a number of police officers positioned themselves around that vehicle and brought that vehicle to a stop.

In that situation, I was required to stand in front of the vehicle, point my weapon at the occupants of that vehicle and continue to point it at all those people until they were, one by one, removed from the vehicle, searched and then taken into custody. As it turned out, there was a family of four adults and three children in that vehicle and it was a toy handgun that, yes, did look like one of the handguns we see on the board today, the one in the top right corner.

As officers who are faced with the responsibility of protecting the community, there is no legitimate use for a toy such as that. We can all question what that person was doing pointing that gun out the window–it was an adult who was doing it–and his common sense and everything else, but really, was there a need for that weapon to be there?

I would like to thank the committee for the opportunity to make a presentation to you.

Mr D. W. Smith: In listening to the different presentations here today, I guess I am one of those people who believe that the police have a duty to do and I sometimes think we have to stand behind them a little more. Yet, I know sometimes things happen with the police that do not always work out for the best.

In listening to the presentations and some of the comments that either you or Mr Allan made–I do not know which of you it was–would we be better off to change the regulation? If somebody pointed a firearm, regardless of whether it is a replica or a real gun, in a gesture of defiance or intimidation or whatever the appropriate word is, could that be put into the regulation and if someone does that then they suffer the consequences of what the individual officer or officers would do under in particular setting? Would that be appropriate to add to the regulations of the firearms and other offensive weapons part of the Criminal Code, or something like that? Would that be appropriate?

1700

Mr Allan: In the Criminal Code you have weapons dangerous to the public peace and it reads, "Every one who carries or has in his possession a weapon or imitation thereof, for a purpose dangerous to the public peace or for the purpose of committing an offence, is guilty of an indictable offence." In that situation, if the person believed the replica gun was real, that would fall under this section. As to whether it should go in the regulations, that particular

instance is covered by the Criminal Code right now.

Mr D. W. Smith: I thought you had made the comment earlier that it was not covered. That is why I asked that. In fact, you do have some protection with the replica gun.

Mr Allan: Our concern is that there are too many out there. If someone points that gun at any one of the citizens of this province, he will be sick to his stomach because he will not know whether he is going to be shot or whether it is a mere toy that has been bought for $4.99 at the store. A police officer circumstance would be even worse, because the officer may draw and fire, as they did in Brantford, upon that person because he fears for his life, not knowing it is a toy.

Mr D. W. Smith: That is what I say. If I were a police officer too, I think likely the instinct would be to do the same as that police officer. We are all human.

The other thing, maybe in a little lighter vein, is that if we were to approve this bill, would we be making people like Mr Farnan rich people because we had banned replica arms? Is there any conflict of interest here, Mr Farnan? This could be a valuable collection some day.

The Vice-Chair: I take it that question does not require a response. The next one is Mr Farnan.

Mr Farnan: I found the two presentations combined, the last presentation and your presentation, extraordinarily powerful. I wish all members of the House would have had the opportunity to hear that. I think all we can do is to make sure every member of the House gets a copy of the transcript.

One of the things I have noticed with children playing is that it is not just the gun; there is body language. There is the way you stand, the way you hold the revolver or the gun and there is a whole role-modelling from television, etc. "Hold the gun at arms' length when firing", is an instruction on the back of this toy. "Should be used under adult supervision." "Never point or shoot your gun at anyone." It seems extraordinary to me that you could give a child a toy and say, "Never point or shoot your gun at anyone." The whole purpose of the toy is to play cowboys and Indians, cops and robbers, whatever.

You described an incident and I am wondering if it is the same incident. Hill Street Blues did a segment on replica guns. I have not seen it myself, but it was relayed to me by someone else that the segment was of a child with a toy in a situation of family violence, with police officers going into a darkened room, the child coming out with this gun, and a fatality occurred. Again, it is a split second, dark lighting, whatever. What kind of scenario was prompting that analogy?

Mr Allan: Exactly your rendition of the child coming out with the gun. Of course, it is not just the mere fact of a child coming out with a gun; it is everything that leads up to it. When an officer responds to a domestic situation, he sometimes has information that there is a gun involved. It is whatever the dispatcher can get over the phone, that there is a gun involved, that the people are very violent and are screaming in the background.

All this information adds up to the scenario of your walking into this house and perhaps a child or the father is pointing some sort of replica gun at you. It is a very dangerous situation. It is just the fact that these guns are available for sale. It is not that this act is going to ban these guns, but eventually it will weed them out and it will not be the kid's brand-new toy underneath the Christmas tree that the father is trying to intimidate the next-door neighbour with, or someone who is not aware it is a toy.

Mr Farnan: I think both of you made reference to the plastic replicas on the wall. I think what you said was that certainly at first glance there is no doubt in your mind that these could be mistaken for real guns. Is that correct?

Mr Griffen: That is right.

Mr Farnan: The other thing I think I heard you say was that what we are looking at is having common sense prevail. You have talked about the colour and the shape. Perhaps we can look at a definition in which the colour and the shape obviously do not conform to a real gun.

Mr Allan: That would help.

Mr Farnan: You would agree that no matter what we do there are going to be circumstances where somebody is carrying a flashlight and turns around quickly. The potential for fatality in some unknown circumstance is always there. I think that has to be on our minds, that we are not going to create a perfect world where police officers can be held absolutely accountable for some fatality because we have removed replica guns. There may tragically be another circumstance where a fast movement or an object flashing in the light creates that instant reaction.

I think all we are trying to do is reduce the odds of these kinds of situations for officers. I do not think anyone could have brought this more clearly to the attention of the committee than you

and the previous delegation today and I thank you.

Mr Dietsch: In your presentation you said that you felt municipal bylaw officers should have some authority in this comparable to what the alderman from Hamilton said, but different from the presentation of the OPP. Could you explain further.

Mr Griffen: Maybe it is just a matter of having experience with the municipal bylaw officers in a municipal police setting. We o have bylaw officers who are enforcing various municipal regulations and also, I believe, some provincial statutes in the larger police communities. From that experience, I feel comfortable that an act that prohibits the sale of a replica handgun can easily be enforced by those people. We are looking at the sale, not the possession.

Mr Dietsch: You are dividing it into two parts then, one for sale and one for possession. I personally do not agree with you. I do not think it can be adequately dealt with by municipal bylaw officers, having had several years' experience on the other side of that fence. The reason is that you have split jurisdictions. You only create further confusion and develop a scenario where you are going to have people differentiating: "Is it a replica or is it not a replica? Is it based on colour or is it not based on colour?" I guess I disagree with your position in that respect and I will give you an opportunity to rebut that if you want.

1710

Mr Griffen: If I look at Bill 145, I believe it is quite clear under what circumstances a person can sell a toy gun. When a municipal bylaw officer walks into a store–and I would suggest that there are other requirements that may bring the officer into that environment on a regular basis–if a person is selling a toy for sale and does not have a permit for it to show that that toy has been approved by the regulatory body, then I think it is quite easy for the bylaw officer to distinguish that and take the appropriate action.

Mr Dietsch: I still disagree with you, but the other question I want to ask you is in relationship to section 87 and the possession, if you will, of an imitation weapon under that area. Do you feel that that might be the better way to go in terms of stiffening up that kind of legislation as opposed to introducing new legislation?

Mr Griffen: I think that you can govern by leadership and this is an opportunity to clearly show what the leaders of our province believe is an appropriate form of legislation, and perhaps the federal government would follow by example. My understanding, on reviewing the presentation from the Canadian Association of Chiefs of Police, is that the association made submissions to the federal government as early as 1986 and has never even had a reply. So it is a question of what is going on in our communities and what we can do about it to ensure that we prevent tragedy.

Mr Dietsch: I would suggest that you are living in a world of hope, as we do very often, that the government would follow some leadership.

Mr McGuinty: Could you issue a summons to Mr Fendley to come back into the room? Is he not in the building? I know he is outside, but I want him back in.

Mr Dietsch: Who is going to enforce it?

The Vice-Chair: I take it, Mr McGuinty, that you have a question for the previous presenter.

Mr McGuinty: No.

The Vice-Chair: We do still have one more presentation and we still have some housekeeping to do, so I would ask you to either ask your question of this delegation or forgo it.

Mr McGuinty: Either relieve myself or get off the chair. Three seconds, Mr Chairman.

What I have to say is not a question of you gentlemen but an observation. We come to Queen's Park and we cannot deal with all the issues before us; it is impossible. We have to be selective. The one I have selected is the policing situation in the province, partly out of a disposition because of experience. I will not tell you on what side of the police I was dealing.

Since I have come to Toronto, in the last year especially, I see issues have been raised in the Lewis report with regard to racism in the police force. I read about civilian review committees. Now we have reports about gun firing. Next it will be high-speed chases. One of my buddies who is a chief in the small town of Pembroke says: "We have a simple policy. We simply tell the dispatcher, 'Go get him.'"

It seems to me, as a small-town Ottawa Valley boy, that in Toronto this is kick-your-cop year and I have a really sympathetic understanding and feeling, because I think that many of the things that have been brought forth are really open to interpretation as aspersions upon the professional qualifications and integrity of police.

I think that the presentations from Tom, Larry and yourselves have reasserted the fact at a grass-roots level that politics is not policies; politics is people. You are the people who know what is going on out there in police work. When

Mr Farnan said that the presentation by you and Tom was extraordinarily powerful, I think he hit the nail right on the head. I really appreciate your coming forth to give your views because you are the guys who know what the hell is going out there.

The Vice-Chair: I would like to thank David Griffen and Doug Allan from the Niagara Region Police Association for being here today and for sharing their thoughts with us.

Our last presentation for the day comes from Ruko of Canada Ltd and we have Rudolph Koppe who is the president, and from Stoeger Canada Ltd and we have John Mock who is the general manager.

Gentlemen, I see you have been following the proceedings all afternoon, so you understand that we are hopefully allocating just under half an hour for your presentation and we would appreciate your leaving some time for questions within that 30-minute period.

I would like to advise committee members that prior to recessing today, there are some housekeeping matters that we have to deal with prior to the next meeting. So keep that in mind when you are making observations and questioning the presenters.

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Mr Koppe: I recall Mr Farnan saying yesterday that he also welcomes some opposition. So far, in the last two days, I have witnessed that everybody is in favour of somehow or other restricting further the use of guns, be it look-alikes, toy guns or whatever.

I am not a lawyer by any means. I did not have the use of a lawyer to develop my speech. I even had very little time to prepare because the first time I knew about it was last Thursday. So I have written something down which I will read.

I have agonized over whether I should say anything at all or just walk away from this meeting. But then my silence would be considered as agreement with the general viewpoint of the panel, except possibly one or two members. So I decided to talk today, not only as the owner of Ruko of Canada Ltd, but also as a private citizen.

You notice by now that I was not born in Canada, but I am a Canadian citizen. I want to make it clear that my viewpoints are solely my own and not those of any organization I may be connected with.

First, let's make something very clear. Any object that is called a gun, be it an air gun, air pistol, starter pistol or toy gun, looks like a gun. Air rifles look like rifles but are powered by compressed air. The same goes for air pistols, water pistols or any other guns or pistols. I would like to add here that I do not believe a green pistol makes any difference.

1720

Today there is plastic and steel paint around that will cling to any item whatsoever. As a matter of fact, allowing yellow or green pistols as toy guns might bring to the mind of a smart criminal to take a real pistol and paint it green, and then I would suggest the police are in real shit. They all look like real guns. That is why the Criminal Code applies to all of them under circumstances when they are used. Replicas are authentic reproductions of existing guns. That is why they are called replicas. Replicas could be pistols, revolvers or rifles. Whether it is dark or light, these guns will look like guns.

You were made to believe by Mr Jakobek that the toy guns are made of moulds of real guns that are shipped overseas. Real guns are not moulded, the one exception being the Steyr AUG, which is of space-age technology and of which I have never encountered a replica. The frames of real guns are forged from high-quality steels and alloys, the barrels are machined from very tough steel. They are not moulded.

Some of the starter pistols, replicas and toy guns are moulded. They cannot be converted into real guns. They would fall to pieces after the first shot. But making fake guns into real guns is a crime, and covered under the existing Criminal Code.

Mr Kormos said that the only purpose of guns is to kill. He said that yesterday. I would disagree with him. There are hundreds of thousands of people involved in the shooting sport in Canada who use guns expressly for the sport and not to kill. To mention just a few of these sports: skeet, trap, sporting clay and target shooting with all types of rifles, pistols, air rifles and air pistols. Air rifle target shooting has become an Olympic discipline.

Guns are also used for hunting. But when some hunters shoot animals and if you call those hunters killers, then you also must use the same terminology for fishermen because the end result of both actions, hunting or fishing, is the same. The animal and the fish both end up dead.

Mr Jakobek last night told you that the city had no objections from any sporting or hunting groups at their meetings although, as he claims, he notified a good number of concerned individuals and parties. I disagree with his viewpoint.

I had this morning a phone call from Rick Morgan, executive vice-president of the Ontario Federation of Anglers and Hunters Inc on the matter of Bill 145, of which he only was informed today. He also confirmed that he was not contacted by Mr Jakobek in relation to the Toronto city bylaw. The first time he knew about it, he said, was weeks after it was an accomplished fact. The Ontario Federation of Anglers and Hunters has 73,000 members.

As a major supplier of air guns and air pistols in Canada, the sale of which the Toronto city bylaw has now outlawed, I believe I should have been made aware of their meetings. I was not. This may be excused on the grounds that my company, Ruko of Canada Ltd, is located in Mississauga. The first time I knew about this law, it was already an accomplished fact and announced in the Toronto Star.

I am sure you must be aware that you did not invite me to this meeting, although my business is definitely located within the boundaries of your jurisdiction and my business does concern look-alikes or replica guns in the form of starter pistols, which I sell. I heard about it from one of my customers last Thursday. Mr Arnott provided me with the opportunity to be here and I thank him.

Now to the matter at hand. I started Ruko of Canada 34 years ago from point zero. For 34 years, I worked 12-hour days and, especially in the first 15 years, six- and seven-day weeks. All my strength, all my energy, all my resources went into building this company. So did all the energy of my wife who joined my life and company after the company had existed for seven years. She runs the office and financial end. Her working days are never shorter than 10 hours. We have three children, two boys and one girl. The youngest boy, 22 years old, and my daughter, 27 years old, also work in the company.

Over the years, I contemplated selling the company several times, especially when things got really rough, but then my son showed some interest in it one year ago. I told myself to give him a chance and see what he is made of.

Now I see that two unconnected events will make the decision for me, because as surely as we sit here, if you have the power to introduce your own bylaws in respect to look-alikes and replicas and air guns and are able to alter completely existing federal laws, pressure by the media and like-minded parties soon will force you to impose your own bylaws on all other guns still in the hands of the public. That will be the end of Ruko.

Two people not connected to each other commit criminal offences. One holds up a store, the other attempts to cross the border illegally. Both in committing one offence commit another more serious one: they point a firearm at officers of the peace. Both pay for their crimes with their lives. Had they not been killed, their sentences would have been a lengthy prison term, provided that we ever use the laws which we have. We do not.

Section 85 of the Criminal Code states: "Everyone who carries or has in his possession a weapon or imitation thereof, for a purpose dangerous to the public peace or for the purpose of committing an offence, is guilty of an indictable offence and is liable to imprisonment for ten years." Both incidents were widely publicized and rehashed in the news media.

You today, like the city of Toronto before you, are now proposing a law that will not punish future criminals–laws for that purpose are already in existence–but punish hundreds and thousands of law-abiding men, women and children who enjoy the shooting sport with air rifles, air pistols and BB guns or who simply enjoy the looks of look-alike guns, the collection of same, or play with them.

Of course, the media has brainwashed some of us to where we believe that everyone who has a gun or says that he likes guns is looked upon as a lunatic and perceived to be criminal material. When I see some of the blood-curdling shows on television, I seriously doubt the sanity of the producers, but they, unlike other normal citizens, are given special consideration in the Toronto city bylaw to obtain those guns in question and can go on producing these gruesome movies.

I am sure that millions of Canadian households have toy guns, air guns, starter pistols and look-alikes in their homes. Two people out of those millions commit a crime and everybody gets punished in the name of justice.

1730

It is amazing the compassion we have for criminals. How about our compassion for the victims of crime, the countless men and women who work hard and pay their taxes to make the existence of a government possible? Why do our news media not count the number of innocent people being killed and raped by second-time offenders, criminals who never should have seen the outside of the prison walls again, or do we look upon those law-abiding, hardworking,

taxpaying members of our society as second-class citizens?

Everybody seems to be obsessed with two criminals. Nobody seems to give a damn about is it 10, is it 20, is it 100 or more innocent people who are killed or raped, whose lives are blown out or are ruined by second-time offenders every year because our justice system does not enforce the laws which are already in existence. It is now assumed that a convicted criminal terrorizes hundreds and thousands of innocent, law-abiding citizens in the Maritimes at this very moment. Could it possibly be because we are compassionate and shy away from the death sentence for serious criminals?

A friend of mine owns a gun shop in Chatham. He had a sawed-off shotgun shoved into his face by a 19-year-old. Yesterday, you talked of a policeman's racing heartbeat when he confronted a criminal with a gun. What about my friend's heartbeat when he looked down the barrel of a shotgun? Maybe because he sells guns he does not deserve any better. The 19-year-old got a two-year prison term.

The law provides for up to 10 years just for having a gun in possession when committing his type of crime. The gun charge was plea-bargained away, as like in dozens of other cases before. I see no outcry in the news media, no outcry by you or any other politician.

You want a safer society, you want to fight crime, fight it with the laws at hand. Put your pen and your word behind it. Give it your full support. Do not punish the population with new, restrictive laws.

Somebody, over 100 years ago, once said, "The disintegration of a society starts when laws are no longer being applied in the manner they were intended to."

The Acting Chair (Mr Kanter): Mr Mock, did you intend to speak?

Mr Mock: I have just a few points I would like to add. I will keep it very brief.

The Acting Chair: If you might, because we have to vote, or many members of the committee will want to vote at 5:45, and I know people have questions and there is one short item of business.

Mr Mock: I will do it very quickly.

Mr Koppe: I would just like to point out to you that I have here the most horrendous rendering of judgement I ever saw in my life in conjunction with that gun store heist in Chatham. A young man 19 years old holds up a gun store; 20 days later, he holds up the same gun store again. He was judged to be of sound composure, a good young man.

The Acting Chair: Excuse me, Mr Koppe, you are really digging into the time of the members for questions. We do not have too much time, so I would appreciate if you could give us a little time for questioning.

Mr Koppe: Okay, sorry.

Mr Mock: Some of the points are directed to the bill itself. We see no statistical information to support this as far as how many crimes were involved with replica guns. One of the questions we have is, where do items like starting pistols fall within this bill? They are used primarily for track and field events, dog training, survival flare guns. Currently, they are not classed as firearms and they should fall exempt of this Bill 145.

Air guns that are over 500 feet per second currently fall under the classification of firearms and are covered under the federal legislation. Air guns that fall under 500 feet per second are classed as weapons or are looked at as replica types of guns, because there is no firearms acquisition certificate required to purchase them. There is only an age requirement that is laid out under the federal law.

I have some other questions. Who will have the power to issue the certificate of approval on what a replica gun is and is not? I have one other point that I will make and I will keep it very brief. Some of the questions pointed out that a criminal has a real weapon and paints it green; you do away with them and they make them out of wood; they carve them out. There are a number of ways that they are going to make replica guns themselves. That, basically, covers the points.

Mr Farnan: First of all, I want to thank you for making your presentation. I think it is very valuable that you appeared before the committee. I mean, as advocate of this bill, I certainly am delighted when I hear presentations that say: "Yes, this is a good idea. This is how it can work, etc." But also, as advocates of this bill, I and all the members of the committee, I think, would want to be looking at the bill's being as fair, just, reasonable and sensible as it possibly can be, so I have some things that you have to help me out with.

I do not think there is any problem in terms of starter pistols. There is no reason why a starter pistol has to look like a real gun. In terms of air guns and guns that are used in Olympic sports, etc, maybe you can help me with that. Are those guns used in Olympic sports considered firearms?

Mr Koppe: They are considered firearms if the muzzle velocity exceeds 500 feet per second, and then they fall under the same FAC requirements as real guns.

Mr Farnan: Now, do all of the guns that are used in sports competition fall under those kinds of categories?

Mr Koppe: No. Strangely enough, pellet pistols usually will have a velocity of between 300 to 400 feet per second and do not fall under that requirement, but they are used with that particular velocity for competitions and also for Olympic competitions.

Mr Farnan: I think it is generally recognized that sports enthusiasts and people who belong to rifle clubs, etc, probably have a greater degree of respect for the danger of guns than the average member of the public. That is my interpretation. Because they are around guns, because they know guns and the danger of guns, this group of people you are talking about who would be your clients is probably the most knowledgeable and careful group of individuals when it comes to guns. Would that be fair?

Mr Koppe: That is correct.

Mr Farnan: Okay. Now the problem I have is, are all of these guns registered?

Mr Koppe: No. Only the guns over 500 feet per second.

Mr Farnan: How would this be as a situation? Can you see a scenario where guns that are used for sports would be registered, whether they are above or below the criterion of 500 feet that you designate?

Mr Koppe: The problem we tried to change with the federal government is about air rifle shooting, the day it is acknowledged that an air gun for competition shooting, especially for shooting in the Olympics, usually has a velocity of 600 to 700 feet per second. A youngster who wants to acquire such a gun cannot do so because he cannot get a FAC. So, as in other sports, it automatically rules out certain people. For instance, you have people, girls, starting in the Olympics at the age of 13 today, but a shooter cannot start or cannot shoot then, and yet it is in those very early years when you have the most enthusiasm, and the earlier you start to compete, the better you are, of course. I have made representation with the federal government to allow the same velocities that are allowed and use the same formula that is used, for instance, in the United Kingdom, which runs around 750 feet per second.

1740

Mr Farnan: Now, am I wrong in thinking that we are talking about two different issues here? From what I understand here, these are legitimate guns used in a legitimate sport, a recognized sport, and therefore in a very controlled situation with experts there to monitor their use and some control as to who can actually have them. Is that the reality and is that not a very different reality from a lot of other things that we are talking about?

Mr Koppe: Yes. Actually, both air rifles with velocities over 500 feet per second and also the ones under 500 feet per second clearly must have entered the minds of the lawmakers of the time. It is perfectly legal to sell air rifles or air pistols under 500 feet per second. Air rifles under 500 feet per second usually cost less to the young shooter who may want to take up this favourite sport in the early years.

Mr Farnan: Okay, thank you. I hope we do not rush this delegation, because I think it is very important that, appearing on this side of the issue, this delegation be given every opportunity to express its views to create a sense of balance. You talked about the painting of the weapon green, etc, and the problems that causes, I think we heard earlier, you know, the criminal element will always be devious and will always find ways to try to circumvent a situation to create an advantage for itself, whatever way we do it. If that means painting a weapon, there is no question that it is not beyond. Although we talked about a toy gun, we did not talk about just colour. I think the police officers who were present said both the colour and the shape; that then adds another dimension. You may actually change the colour of something, but if the shape is so obviously different from a real gun, then you are actually giving the police officers an edge in that kind of circumstance, an opportunity to recognize the weapon.

So we know the criminal element will use every device, but what we are talking about, I think, is opportunity. I think what we are talking about here is that there are a lot of guns out there, toy guns, replica guns, that could be easily mistaken.

The other thing I would have to question is, and it is a question I want to ask you, do you think there is a need for stricter controls in the manner in which some of these guns or whatever, air guns, are used? I see young boys walking along the road, going out to a field carrying a BB gun, and it certainly creates an atmosphere in the other children that they meet on the street, a sense of

power and a sense of fear on the part of some of the other children. Some children, let's face it, will demonstrate a certain power by the fact that they have something that actually fires a pellet. Is there a need for greater controls in terms of–

Mr Koppe: I have never heard about an incident that involves very young children misusing toy guns.

Mr Farnan: I am talking about young teenagers.

Mr Koppe: At what age?

Mr Farnan: I cannot say. I have seen them pass on my street. I know that the local police have been called out to the field where these people have had these guns. I am not saying this is the usual. I want to stress that in terms of sportsmen and people who are involved with guns, I think there is a great respect, but what I am saying to you is that there is an abuse among some. Perhaps they are not members of sportsmen's clubs, and that is perhaps why you have the abuse, but I think what we are looking for in drafting the legislation is perhaps to use our common sense. I think maybe you have added some information to the hearings this afternoon that gives us some room for thought.

Mr Koppe: I would like to put a question to everybody here. I would like to know at what age those infringements with guns were carried out. In other words, what age did people have when they pointed look-alikes in Becker Milk stores or in holdup cases? Maybe the police, if there are some around here, could enlighten us on what they encounter.

Are the boys 15 years old, are they 13 years old, are they 17 years old, are they 19 years old? If they are 19 years old, they surely should suffer the consequences. I think they should act as grown-ups, which they are. I am sure they know the laws. I am sure the gentleman who held up my friend's store sawed off a shotgun, so he must have gone with a serious intent into that store to rob it, because to saw off a shotgun and then commit a crime is a very serious situation.

The Vice-Chair: On that note, I would like to thank you for appearing before us. I would also like to thank John Mock for appearing before us and sharing his thoughts with us.

We have some housekeeping to do before we leave. The subcommittee should note that it will be meeting on Monday at 3:15 pm to discuss the business of the following week.

You also have before you a letter that is addressed to the chairman of this committee from a gentleman in Ottawa requesting travel costs to appear before us on behalf of Bill 49 and Bill 52. I would like a motion to one effect or the other.

Mr McGuinty: May I have a comment?

The Vice-Chair: I would like to open it up for discussion. We have about three or four minutes to determine whether or not the committee will be paying the costs.

Mr McGuinty: I can say what I have to say in four minutes, no problem at all. I have glanced through the letter. First of all, I do not know what the practice or principle is regarding–

The Vice-Chair: Would you like to know?

Mr McGuinty: Yes.

Clerk of the Committee: It is provided for in the standing orders that the Speaker can set certain per diems and allowances if committees specifically invite witnesses or if witnesses are summoned by Speaker's warrant to appear before committees.

Mr McGuinty: That clarifies it.

I read the letter, and when I see references such as to "sneaky ways to regressively amend the provincial legislation" or "gag public employees" or "explore means whereby local boards may be 'stiffled' "–I presume "stifled"–or "when municipalities are corruptly run," I would not endorse payment.

The Vice-Chair: Can I suggest that if I do not have a motion to request him to appear before us as a witness, the clerk–

Mr McGuinty: I make a motion that no such support be extended.

The Vice-Chair: Any discussion?

Mr Farnan: Is there a motion?

The Vice-Chair: Is there a motion, Mr McGuinty?

Mr McGuinty: Yes.

Mr McGuinty: I move that this gentleman not be financed to bring this doggerel before this committee.

Motion agreed to.

Mr Farnan: I want to go on record that I received some information today. I have not read the letter, so I cannot–

Mr McGuinty: We received it and we read it.

Mr Farnan: I have not read it.

The Vice-Chair: The committee stands adjourned until next Monday.

The committee adjourned at 1750.

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Tuesday 21 November 1989

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Neumann, David E. (Brantford L)

Clerk: Arnott, Douglas

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Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the City of Hamilton:
Agostino, Dominic, Alderman, Ward 5, City of Hamilton; Regional Councillor, Regional Municipality of Hamilton-Wentworth

From the Ontario Provincial Police Association:
Strange, Larry, Director
Fendley, Tom, Executive Officer

From the Niagara Region Police Association:
Allan, Doug, Director

From the Police Association of Ontario:
Griffen, David, Director

From Ruko of Canada Ltd:
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Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Municipal Freedom of Information and Protection of Privacy Act, 1989

Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée

Municipal Freedom of Information Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Monday 27 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 27 November 1989

The committee met at 1541 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989
(continued)

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION MUNICIPALE ET LA PROTECTION DE LA VIE PRIVÉE
(suite)

MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Chair: I would like to convene this committee. As you are probably aware, we are considering Bill 49 and Bill 52, freedom-of-information legislation. We have a number of people who will be making submissions today, and the first on the list is John Creelman.

I think you are aware of the fact that 30 minutes have been allotted to each of the groups that will be making submissions. We would prefer that the time period not be completely used up, so that members of the committee can ask questions. On the other hand, it is your prerogative to use up the whole 30 minutes on your submission if you wish. With that, I will ask John Creelman to please come forward to the table and identify himself.

JOHN CREELMAN

Mr Creelman: My name is John Creelman. I am a writer and consultant and I am here today representing myself, although I hold the position of contributing editor with the Orangeville Citizen newspaper.

In that capacity, I have made several freedom-of-information applications. In each instance, the material released told us something about the town of Orangeville. I am pleased to say that from my standpoint, the provincial freedom-of-information statute has proved to be the key to unlocking the door to much information at the local level, not just at the provincial level.

But I do have some serious concerns about Bill 49, specifically clause 6(1)(b). If I may quote: "6(1) A head"–meaning the municipality, as I understand it–"may refuse to disclose a record... (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

To better understand my concern, I would like to refer the committee to subsection 55(1) of the Municipal Act and I have attached that to the copy of my written submission. As you are probably aware, this section, while ensuring that local council meetings are open, also assures that committee meetings and committee of the whole sessions of council may be closed to the public.

Subsection 183(1) of the Education Act governs the public's right to attend school board meetings and board committee meetings, save and except for exceptions listed in subsection 183(2). I have also attached that section of the Education Act to my written brief.

Municipal practice varies widely. Municipal procedural bylaws can specify that council may go in camera only for the purpose of discussing legal, property or personnel matters. Then again, they may not. Some councils do not even have procedural bylaws.

In my opinion, the bill before this committee is seriously flawed if it falls back on the current wording of subsection 55(1) of the Municipal Act. While more specific about the topics appropriate for in camera discussion, the Education Act is not much better.

But there is another section of the Municipal Act that I would like to draw your attention to. It has to do with the obligations of the municipal clerk to maintain all bylaws and minutes of council and to make those available for public scrutiny. These obligations are described in clause 77(1)(e) and subsection 78(1) of the Municipal Act respectively.

Let me give you an example of where Bill 49 might well be a step backwards in the context of

the current responsibilities of the clerk of a municipality as just indicated.

Clause 14(4)(a) of the bill before this committee states: "(4) Despite subsection (3)"–that having to do with presumed invasion of privacy– "a disclosure does not constitute an unjustified invasion of personal privacy if it (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution," that meaning a municipality in this instance.

Although I have not tested this as yet, it would be my belief that I could ask the clerk of a municipality for a copy of the bylaw setting the precise salaries of municipal employees and rightly expect that I would receive it. Under Bill 49, however, it looks like I would have to be satisfied with vague information about salary range.

I would like to return to the question of in camera meetings at the local level and the assumptions that Bill 49 appears to make. Principal among these is the presumption that something discussed in camera will eventually see the light of day and therefore documents related to it will be accessible. Clause 6(2)(b) of the bill clearly anticipates this.

Let me give you an example which hopefully highlights my concern. Orangeville council recently discussed something in camera. It was subsequently reported out of committee of the whole inasmuch as it was necessary to apply for funding from PRIDE, the program for renewal, improvement, development and economic revitalization, for whatever was contemplated behind closed doors.

This was clearly a property matter. One could deduce that from the context of the matter on the public agenda. A motion was therefore placed before open council authorizing staff to apply for funding "for the project as described" in the administrator's report dated 31 October, a report, I might add, made to and discussed at the in camera session. The report was not made public; it was only referred to. At what point has what went on in camera become public in cases such as this?

I return now to my main point. There can be absolutely no freedom of information at the local level of government, where frankly it is needed the most, until something is done about the in camera issue. I have no problem with in camera discussion of legal, property and personnel issues provided they are well defined by statute.

In addition, there should be some requirement in statute that the clerk of the municipality maintain a record of what goes on in camera so that at some future point the public can be assured that councils are not discussing something behind closed doors which properly belongs in the public domain.

We just cannot assume that what goes on in camera at the local level will be reported out of committee. There has to be some sort of mechanism to ensure that, given enough time and/or the proper circumstances, what happens at the local level of government behind closed doors will in fact see the light of day.

To conclude, while I realize that it may be beyond the scope of this committee to consider those sections of the Municipal Act and the Education Act to which I have referred, I do submit that clause 6(1)(b) of the bill before you is a major problem and it should be addressed.

I would like to thank the committee for the opportunity to appear here today and I am pleased to answer any questions or provide you with any further examples of what I have been referring to.

1550

The Chair: I would also like to introduce, for some people who may not be aware of the fact, the gentleman on my left, who is the minister responsible, the Honourable Murray Elston.

Mr Sterling: I just want to thank you for bringing these points to light and looking at them in some depth. I just wonder if the minister could answer the question of whether there is a real problem here. I know in the provincial statute it was made quite clear that there was an overriding section whereby everything that was provided before the statute came into effect would be provided after. In other words, they could not use the privacy sections of the Freedom of Information and Protection of Privacy Act provincially to hide previously divulged–I am not sure. I do not have the bill in front of me. I should have it. Is there an overriding section there?

Hon Mr Elston: There is in fact.

Mr Sterling: There is that section. Are you aware of that section in the act?

Mr Creelman: Yes, I am. I am looking at it from the standpoint of subsection 6(1) and I am concerned as a result of my experience in covering local councils. Some of the practices out there are actually quite shocking from the standpoint of revelation of information. I know personally of situations where school board

budgets are all but decided behind closed doors and are merely rubber-stamped in public.

I know of instances where large amounts of public money are determined for property matters and the public never really catches up to that information at the current time. I just do not see how this bill is really going to be that helpful if all the municipality has to do is to claim that the matter has been discussed in camera and that is the end of it.

What we are finding as well is that a great many municipalities report in camera discussions in the most vague and unhelpful fashion, leading the press and the public to wonder what really goes on behind closed doors.

Hon Mr Elston: Really what Mr Creelman is talking about is the concept and the use of in camera hearings as provided for under the municipal legislation. What we are designing to do here is use this legislation to provide the access to information which ought to be available. But you are not asking us to amend the Municipal Act in the concept of the in camera hearing, are you? Or are you?

Mr Creelman: Yes.

Hon Mr Elston: You are asking us to do purely a particular piece of procedural activity for municipal government which this bill does not really contemplate.

Mr Creelman: What I think I am trying to do is to draw the committee's attention to the fact that the freedom-of-information statute at the municipal level is not that effective if there is no parallel reform of the section of the Municipal Act that governs the openness of local bodies, and, similarly, the Education Act governing school boards. There has to be a parallel initiative on those other two statutes as well.

Hon Mr Elston: That is good advice with respect to the bill, though you would not recommend that we purport to change the entire world under the guise of freedom of information without having a real debate about how in camera procedures are carried on in the Municipal Act and the Education Act. Are you? I know as a qualified researcher you probably would not have found that sort of a tack in order through the British parliamentary tradition.

Mr Creelman: I think you catch me on that. I do not know if the committee is aware of a paper that was prepared by G. H. Rust-D'Eye for the Canadian Bar Association entitled Access to Municipal Government. It is a superb survey of the legal precedent vis-à-vis the public's right to know what goes on at councils. Unfortunately, as I understand it and I am not a lawyer, but in the common law there is not a whole lot of room for the public to hang its hat and that access is really only guaranteed by what the statutes prescribe.

I know in my limited work in the area of municipal government that what I observe there is secrecy that I never saw at the provincial level when I worked here over 10 years ago. It would really be shocking if one could catalogue some of the abuses that go on, meetings that are described as workshops, decision-making given out in public at a later date which is purported to have been a debate when in fact the entire matter has been decided behind closed doors without, I might add, the input of the public.

I have a problem with the act not addressing or at least the government maybe not addressing the deficiencies of the Municipal Act and the Education Act.

Mr Faubert: May I just clarify something? Because what he says is quite accurate in relation to the Municipal Act. Mr Creelman, are you saying that there is a deficiency within the act that is before us because of the deficiencies of the Municipal Act? Is that really what you are saying, that they can still hide behind certain provisions of the Municipal Act?

Mr Creelman: Yes, absolutely. I think that, as I understand legislation or a good piece of legislation, it does not rely on other bills; it is self-sufficient, self-contained in and of itself. I think the section that refers to other statutes governing the openness of municipal levels is basically a bad clause. If you want to say what the public should see and should not see, say it in this bill. Do not refer back to the Municipal Act and do not refer back to the Education Act because, when you look at those acts and how they prescribe open and closed meetings, I think they are deficient. You are right.

The Chair: Do you have any additional comments?

Mr Creelman: Just that as an investigative journalist, I was sort of disappointed to see that this does not come into force until 1 January 1991. It would certainly be something that would be helpful earlier than that, and I hope that, as the Management Board gears up its campaign to educate clerks and municipal officials at the local level, it will impress upon them that, even though the act does not come into force until just over a year from now, the spirit of this act should be enforced as soon as possible.

The Chair: On behalf of the committee, I want to thank you for taking the time and effort to

prepare your brief and come here personally and make your presentation. We appreciate it. Thank you very much.

The next group we have is the Association of Municipal Clerks and Treasurers of Ontario. It is represented by Duncan Green, the president and a number of other people. I would ask them to please come forward. I would ask Mr Green to identify himself for the record and to introduce the other people who are with him.

ASSOCIATION OF MUNICIPAL CLERKS AND TREASURERS OF ONTARIO

Mr Green: I am Duncan Green, president of the Association of Municipal Clerks and Treasurers of Ontario. I am also the chief administrative officer for the county of Simcoe. I will let the rest of my delegation introduce themselves starting on my left.

Mr Cousineau: I am Ken Cousineau. I am the executive director of the association.

Mr Mangan: I am Frank Mangan, clerk-treasurer, township of Mara.

Mr Sadler: I am Ken Sadler, the city clerk of London and a member of the board of directors of the Association of Municipalities of Ontario.

Mr Green: The Association of Municipal Clerks and Treasurers of Ontario is a professional organization representing over 2,000 officials responsible for finance and administration in Ontario's municipalities.

Our interest in the issue of freedom of information and protection of privacy at the local level dates back to 1987 when it was determined that municipalities would be included under the Freedom of Information and Protection of Privacy Act, 1987.

1600

On behalf of the association, I would like to express my thanks to the committee for providing AMCTO with an opportunity to present its review of Bill 49. The AMCTO has consistently maintained that while the principles of municipal freedom of information and protection of privacy are sound, these principles are most appropriately upheld within the context of separate legislation. To this extent, the association is encouraged by the development of Bill 49.

As part of an ongoing and, in the opinion of AMCTO, extremely worthwhile consultation process, the association has prepared this review of the bill. I would urge the committee to consider the recommendations contained in this submission as they are intended to make the legislation more administratively viable.

The following principles provide the basis for AMCTO's review of the bill:

1. AMCTO supports both freedom of information and protection of individual privacy at the local level. The association believes that in instances where these two fundamental concepts collide, provisions must exist within the act to uphold the principles of openness and accessibility; principles that have been the cornerstone of local government in Ontario.

2. The association believes that consultation on municipal freedom of information and protection of privacy should be ongoing and recognizes the role of the representatives of local government in considering amendments that enhance the administrative feasibility of the act.

In addition, AMCTO has addressed eight components of the legislation that in the opinion of the association require streamlining. These eight areas have been dealt with at some length in our submission. In the interests of time and expediency I would like to focus on three of AMCTO's specific recommendations and invite the committee to contact Ken Cousineau, our executive director, should questions arise pertaining to any of the recommendations contained in the brief.

Under the collection, use and disclosure section of the act, concern was raised regarding the extent to which personal information must be kept from public scrutiny in order to fulfil the individual privacy component of the act. The concern was that municipalities, in attempting to fulfil the requirements under this statute, would inadvertently become much less open and much less accessible than in the past.

Municipalities currently collect and disclose personal information in the course of day-to-day business that does not, because of the nature of the personal information, violate in any practical way a person's right of privacy. That which could constitute personal information and which is collected as a matter of course by municipalities includes information related to matters such as planning, health, recreation and welfare. In its submission the association has sought clarification regarding information that by the strictest definition is personal information but that must be identified in order to connect it to the municipal information bank, which is fundamentally property related.

With respect to the issue of fees, the association has sought greater autonomy for municipalities by recommending that clause 45(1)(a), which states, "a head shall require the person who makes a request for access to a record to pay

(a) a search charge for every hour of manual search required in excess of two hours to locate a record," be amended to state, "a head shall require the person who makes a request for access to a record to pay (a) a search charge under terms established by bylaw."

The association believes the conditions under which municipalities charge for a record search should be defined by each corporation and be based on their specific administrative considerations.

In addition, AMCTO believes that subsection 45(6), which indicates that cost shall be paid in the manner prescribed by the regulations, could lead to both administrative difficulties and confusion on the part of the public since municipalities currently have authority to establish fee schedules under subsection 78(1) of the Municipal Act. AMCTO has recommended that subsection 45(6) be amended to state, "Municipalities may set a reasonable fee schedule by bylaw."

The association also made a recommendation with respect to the confidentiality provisions in other statutes. AMCTO acknowledged that municipalities are governed by a number of statutes that contain provisions relating to both freedom of information and protection of privacy. There is some question as to how these other statutes would be affected by the Municipal Freedom of Information and Protection of Privacy Act. In its submission, AMCTO has requested that a thorough review of the confidentiality provisions in other legislation be undertaken.

In addition, the association has requested that in instances of a conflict between the principles of freedom of information and protection of privacy and that which is set out in another act, the appropriate amendments be implemented. AMCTO has recommended that this review focus on, but not be limited to, the Municipal Act, the Assessment Act, the Vital Statistics Act, the Planning Act and the Interpretation Act.

In addition to the issues already discussed, the association's submission examines the definition of personal information, the definition of employee, the definition of persons for the purposes of the act, reporting requirements and the list of tribunals covered under the legislation.

The association is pleased to submit to you its review of Bill 49. While AMCTO is committed to the implementation of freedom of information and protection of individual privacy at the local level, the association believes this must be accomplished in a manner that does not conflict with other administrative requirements undertaken by municipalities. The association believes the recommendations put forth in its submission will remove the apparent administrative obstacles that currently exist with the legislation.

Mr Sadler: I would just like to follow up, if I might. I am wearing two hats today and I would like to indicate that the Association of Municipalities of Ontario is in support of the presentation of AMCTO and that there will not be a separate submission from that association.

Hon Mr Elston: May I, first of all, thank the presenters and, second, indicate that we spent some time trying to work this legislation through and we have been quite thankful for your assistance. In fact your last point, about the confidentiality provision, I think is quite helpful and we will look to clear up what appears to be a slipup on our part and we appreciate your assistance on that.

There may be something, as well, that we might be able to do in terms of the fee schedule. I believe there has been some sort of consultation back and forth as to how this issue might be resolved in the sense of having people being able to use a bylaw to set a charge up to a prescribed amount or something like that. Certainly we are quite willing to act in accordance with those discussions to assist to clarify that as well. We appreciate these issues being brought forward.

Mr Green: Thank you very much, Minister. Our association has been very pleased to work with the staff of the Management Board of Cabinet on this legislation.

The Chair: That is fine. Thank you very much. We appreciate the time and effort over the last number of months and you have been very helpful to us.

I would ask the next group to come forward. We have a group from the Ontario Separate School Trustees' Association scheduled for today. Are any of them present? I would like to get some advice from the next group. Apparently there is a third party of your presentation who is not here yet. We can adjourn for 15 or 20 minutes or we can go ahead and start with the first part of it and hope that the third person will join you before you are finished.

Ms Anderson: We would prefer that you would adjourn while we wait for her. Then it would be one cohesive presentation, rather than broken.

The Chair: I understand you were ready to proceed at 4:30, but some of the other groups have gone through rather quickly. We will recess

until 4:30 in the hopes that the third party will be here.

The committee recessed at 1610.

1630

The Chair: At this time I would like to reconvene the meeting. I would ask the Annex Women's Action Committee to please come forward. As mentioned previously, we allow 30 minutes for each group of presenter, and we would appreciate it if you could leave some time at the end for questions.

ANNEX WOMEN'S ACTION COMMITTEE

Ms Anderson: Mr Chairperson and members of the standing committee on administration of justice, I want to thank you for giving us the opportunity to address your committee.

The Chair: I wonder if you could identify yourselves for the record.

Ms Anderson: I was about to do that in the next paragraph. I will do it twice. This is Zelda Abramson on my right and this is Linda Abrahams on my left. I am Ellen Anderson. We are members of the Annex Women's Action Committee. I am the chair and these two women are associates.

We feel that Bill 49 and Bill 52 are extremely vital pieces of legislation. They should enable us to have access to information we have been unable to obtain, information that would help provide better protection for our community.

I am Ellen Anderson and I am here today with other members of the Annex Women's Action Committee, Linda Abrahams and Zelda Abramson. We have a three-part presentation. I will open the presentation, Linda Abrahams will follow and Zelda Abramson will do the summation.

We would like your committee to know why we want an act to provide for freedom of information and why we feel it is so important. At the end of May of this year, the female residents of Howland Avenue in the Annex in the city of Toronto experienced a profound sense of terror of a serial rapist. The rapist was known to break and enter their homes and attack women as they slept.

On one week's notice, by word of mouth, we notified the three blocks of Howland Avenue on which we knew the rapist was active. Over 80 women attended from the surrounding neighbourhood. At that meeting and subsequent meetings, representatives from surrounding communities joined forces with us because they too had faced similar problems.

The Metropolitan Toronto Police were present and were asked for statistics. We wanted to know the frequency of the assaults and the time span over which they had occurred, as well as the seriousness of the situation. They could not answer any of the questions, but they did hand out a warning sheet with a description of the rapist.

At a second public meeting, the sexual assault task force was invited to attend. We asked again for statistics. This time we were told that they were unimportant. Wendy Ward of the task force said: "Crime is crime. It doesn't matter what it is called."

It does matter what it is called. It is important to know what sort of crimes occur. It is important to know how many, when, where and how they occur and who the victims are. Statistics are knowledge and a tool with which we can gauge reality and take steps to remedy and alter our behaviour and the behaviour of others to increase our safety and sense of wellbeing.

Much of fear is based on not knowing all of the picture. The situation might not have been as bad as imagined or perhaps it might have been far worse. Either way, with accurate information, we could have had a more positive way to deal with our situation.

Access to freedom of information for the police is of utmost importance to foster a secure working relationship between the public and the police. Lack of access leads to fear of victimization from crime-breakers and distrust of the police in their ability to inform the public of dangers.

We are not asking for the names or addresses of the victims. We are asking for the right to know in which city blocks the attacks took place, the number of attacks and over what time period the crimes occurred. We are asking for the right to know how the crimes are recorded and interpreted and classified.

We want to have information that relates directly to our community. We want to know because we care very deeply about the people who live there. We want to know because with that information we can ask for the kind of protection we need and for the kind of support and funding the police need.

I have three questions regarding Bill 49. The first question is about section 8 regarding law enforcement. Will the bill actually alter the discretionary and interpretative powers the police use at the present time as to what sort of information is released? The second question is about the appeal system. Is there a time limit

during which the appeal will be heard? The third question is, if the appellant wins the appeal, is there a time limit in which the information must be given?

The inclusion of the appeal process appears to provide a means of accepting the bill as it stands to allow the exceptions in section 8. The issue is freedom of information, not disclosure of information and appeal. Again, the onus must not be placed on the private citizen.

At this point, I would like to introduce Linda Abrahams who will discuss her efforts in her attempt to obtain information from the police.

Ms Abrahams: I would like to highlight a portion of the Safe City report, which was passed unanimously by city council in 1988:

"In order to participate effectively in crime prevention women need access to information about sexual assault in their communities and they need to be able to use this information to effect change. Community action based on a careful analysis of local violence against women can enhance the safety of communities.

"Withholding information on sexual assaults (ie times and places) because it may unduly frighten women limits their role in preventing it. Excessive fear may be based on having inadequate information. In certain American cities police publish monthly maps of sexual assault locations."

Recommendation 34 of Safe City report reads as follows:

"34. That city council recommend to the Metropolitan Toronto Police Commission the monthly publication of a map of sexual assault sites."

From the meetings that the Annex Women's Action Committee have held, we have learned that the women in our community wish to be informed of the crimes occurring against them. They express shock and anger upon realizing that only blocks away from their homes, or nearer, women have been attacked and they have not been warned of the occurrences.

Sergeant Finlay informed me that the current policy for informing the public is to issue a press release on the crime. The publication of this press release is left to media discretion. We consider this inefficient and unfair to women's safety.

My efforts on behalf of the Annex Women's Action Committee to obtain statistics from the police on victim occurrences in our community have been continuously thwarted. I have been treated discourteously and the limited co-operation I received from those I contacted left much confusion and frustration.

As per the attached documentation, one statistical discrepancy uncovered was the fact that the statistics issued by Division 14 regarding offences in the Annex, female victims, for 1988 and 1989 up to 25 July 1989 record no occurrence of aggravated assault. Contrary to those statistics, a woman was viciously beaten and injured in the basement of my home on 2 January 1989. This crime was named aggravated assault by investigating officer Allan Simpson, then of Division 14.

The Chair: Can I interrupt just for a minute, please.

Ms Abrahams: Yes.

The Chair: I am raising a question of procedure here, which I would like the committee members to consider and give me some direction on. I have not read this in a lot of detail before now, but it looks as if you are going to go into some names of individuals and events, and I just wonder about the appropriateness of having that go into the record as an exhibit.

I wonder if I can just ask the committee members to read the two pages I am referring to in the submission and perhaps give me and the clerk of the committee some direction as to whether in fact that information should go on the record as an exhibit.

Mr Kormos: What two pages?

The Chair: The pages do not appear to be numbered.

Ms Abrahams: Excuse me. I will just leave the names out if you like.

Hon Mr Elston: It is just a question of how–

The Chair: I am just looking for some direction on that.

Mr Kormos: My position is that if the shoe fits, let those people wear it.

Hon Mr Elston: The question is whether the events are to be disclosed on the public record and would name the victim of an assault who may not want to be named. I just wanted to make sure it was clear in case if the names were given, there would be an identification we may not want to occur.

Ms Abrahams: You mean as far as mine is concerned?

Ms Anderson: The victim's names should be removed.

Ms Abrahams: Should it?

Hon Mr Elston: And the other people.

Ms Anderson: Yes.

Ms Abrahams: She knows it is being said. There is no problem on a personal level, but if that is a problem here, just remove it.

Ms Anderson: I think–

Mr Kormos: Wait a minute. It is not a problem here.

Ms Abrahams: It is not? Well, she knows very well that I am saying exactly what I am saying.

Mr Kormos: It should not be a problem here. Holy cow.

Ms Abrahams: I will remove it if that is okay.

Interjections.

The Chair: It is just a level of comfort for us.

Ms Abrahams: Err on the side of caution. I will remove it.

The Chair: Thank you. Proceed then.

Ms Abrahams: Is that the same case when I mention the officer's name?

Ms Anderson: No.

Ms Abrahams: Okay.

This contradiction remains unexplained in spite of my inquiries. Clearly, the police department has demonstrated both a lack of response to the concerns of the women in our community and an unacceptable lack of accountability.

The Annex Women's Action Committee remains committed to alerting women to their vulnerability to violence and to educating women on preventive measures. It is a tragedy that the very information that would motivate women to take precautions is being withheld from them.

1640

Ms Abramson: I am going to go next. I am Zelda Abramson and I am just summing up.

Freedom of information is just that, the right of a citizen to obtain information. In many instances, information is helpful and can prevent a potentially dangerous situation, particularly in instances of sexual assault. We are here today to discuss this specific topic, the public's right to obtain information. Over the last two years, our neighbourhood has fallen victim to a dramatic rise in sexual assaults. It is believed that the majority of the assaults committed are by one assailant.

As mentioned by my neighbours presenting here as well, our success in obtaining information regarding these assaults from the police department was limited at best. As a result, many women have been put in danger in order to make the police job easier. Not to disclose information as it may interfere with arrest of a criminal is inappropriate reasoning in relation to crimes of sexual assault. A woman's personal safety is seriously jeopardized when information is withheld from her. Information is crime prevention. The police track record stands for itself, and not for women. We have a right to take care of ourselves.

Information is power. Power is control. When a woman is at risk of being victimized, it is essential that she obtain all relevant information. It is important for her to restore control to her life in order to better protect herself. Living in fear is unacceptable. Without information, she is unable to do so. Information is a right.

In conclusion, we have serious concerns regarding Bill 49, specifically section 8. The wide-ranging discretionary powers given to the police do not protect women; in fact, women will continue to be placed at risk. We do not trust the police to make appropriate judgement calls. We recognize that certain information cannot be disclosed, for example, information that would reveal a victim's identity. We strongly request that the act should specify the areas where information must be disclosed upon request by the community.

I would like to close by giving an example that illustrates our concerns.

The assault took place one and a half years ago in a downstairs basement apartment. The time was between 3:30 and 4:30 am. A single woman who lives alone woke up to find a man on top of her. She screamed and fortunately he ran away. That night she had fallen asleep in her clothes. Her skirt was not on when she realized what had happened.

The police reported this crime as a break and enter, and nothing more. Nothing was taken from the apartment. In discussions with the police, it was raised whether the community should be advised of the break-in for what we believe was a clear intent of sexual assault. The police responded that this was not necessary because the victim was most likely familiar with the assailant and there was nothing to worry about.

Two weeks later it came to our attention that three similar break-ins for the purpose of sexual assault subsequently occurred. All were single women living in a basement or first-floor apartment. Could these break-ins have been prevented? Hindsight, of course, is always 20-20. However, it was the police judgement call that the first one was an isolated event, the victim knowing the assailant.

What right and power do the police have in determining whether a woman knows a person or

not? What right do the police have not to record this crime as a break-in for the purpose of sexual assault?

This categorization was explained as follows: "Perhaps the assailant knew that the woman had $12,000 at the foot of her bed. He was on top of her because he was in the process of reaching over her to take this money. It is unclear whether the intent was sexual assault or robbery."

I am sorry. I want to laugh.

The police must be accountable for their decisions as well. Wide discretionary powers work against accountability and work against crime prevention. More balanced legislation that is clear and fair is what we are asking for. Bill 49 as it stands is not that. We are working together to build a safe community. Please help us reach our goal.

Mr Kormos: Interestingly, the last time we were here discussing this the police or representatives of police forces were here saying, "We are nervous"; that is to say, the police. They defined the area, particularly the extent to which criminals could discover the extent of an investigation, in effect, or the names of informers in particular.

Obviously, the type of information you require, at least in the one instance, would be information that has to be delivered speedily. It does not do any good for it to be delivered to you two months down the road, such as it is here at Queen's Park under the freedom-of-information act. By the time you go through the bureaucracy, by that point it is history. For your specific purposes, you would want current information.

What sort of mechanism? The police now use their own discretion. Sometimes they hold the grandest and greatest of press conferences, more so when they want to announce a series of arrests than announcing the crime itself. At other times they appear to keep their cards close to their respective chests. What type of mechanism would you suggest would be appropriate, not just for Toronto but for small communities like Welland and Thorold, where I come from?

Ms Abramson: We are focusing solely on the area of sexual assault, so I will refer to that. as soon as there is a sexual assault, I feel it is important that it has to be announced and women should be notified in the community in which it took place. They should be notified of how it happened, was it a break-in through a window, was it a basement flat, was the woman living alone, was it on the street, wherever it was.

I am very sensitive to the fact that the victim's identity has to be kept a secret. We are very sensitive to a lot of information that cannot be revealed to the public. We are not asking for that; we are asking for information which will help us to protect ourselves.

We want to be informed immediately of the time and occurrence of any sexual assault. We want to be notified of even a potential sexual assault. We do not want to leave it to the police discretion to say, "We think it may be, but maybe it's not." Even if we think it is maybe, people should be notified. Thinking it is maybe, as a matter fact it can be and there is the potential.

If you have three or four of those, you have a pattern. Women should be notified of the pattern. It could be a community advisory board with communication with the community. The community wants to become involved and this is not a bad thing. Community involvement is positive and helps us to work together.

The police are always seen as bad guys. They are alienated from the community. They do not understand. So what we are looking at is working together, but the community has to have an active role.

Ms Anderson: I think what we are asking for are guidelines, because we have discovered in dealing with the police that within the city itself, and it must occur in cities across the province, every police division within the city has differing guidelines as to what it will and will not reveal.

There is a great deal of variance in how the police operate in communities right across the province. I think it would be handy and it might be a desirable thing to have some sort of consistency regarding crimes against women, basically sexual assault, in which the police are given guidelines saying, "Look, you have to ensure women's safety," and perhaps the province can say, "Why do you not consider this?"

I am also aware that there is a Police Act that is supposed to come up for amendment soon. Our group has asked to find out what the recommendations are. I do not know whether this is a problem that should be resolved here as far as this particular act is concerned or whether it is one that should go into the Police Act, although our feeling or instinct at this point is to approach you and say, "Is there no way you can accommodate this one very small group?" It means more than half the population is at risk because of information they cannot get, seeing that women make up 51 or 52 per cent of the population.

We are finding that sexual assault is a growing crime in cities. There has recently been an international conference at which delegates from cities around the world met in Montreal and they

realized that this is a problem we are all going to have to deal with. It is just going to get bigger. I do not know that much about legislation so we have come here to ask you for help. Is there any way we can look at this particular act and our particular problem and find a way to deal with the law in which we can protect individuals and their right to privacy but also deal with this particular crime which affects, as I said, over half our population? I do not know.

This is why we are here. We are here to say: "This is why we came. This is our problem. Are there any solutions that you can offer us?"

1650

Ms Abrahams: I would like to recommend that you give a directive to the police to communicate with the women's associations that are springing up because of this problem, to open up the lines of communication as they get the information themselves, and also, on the larger scale, to publish a map, which the city of Chicago is doing. They have a leading edge on dealing with this kind of a problem.

Mr Kanter: First of all, I want to commend members of this group for coming before us. They are constituents of mine, neighbours of mine, as it happens. I think it is really useful for the committee to hear from citizens as well as from representatives of the police community on matters like these.

I do have a little regret that, unfortunately, the police came to one meeting and the citizens came to the next meeting. It is unfortunate, but certainly through the records and things I am sure you have seen their views and they can see yours.

I agree with you 100 per cent that information is important to foster a better working relationship with the police. Through some of my former work as parliamentary assistant to the Solicitor General, I know there is a big emphasis on community-based policing and it has to go both ways to be effective.

I share your frustration in the sense that there is a problem and you are not quite sure how to fix it. I am wrestling with it myself and I would like to hear whether the minister has any comments as to whether there is anything that can be done in this bill, which as you know is an omnibus bill which deals with police, school boards, municipal councils and a whole number of things.

With respect to the police issue, I did have a discussion with some of the representatives of the Municipal Police Authorities last time and I think you are right; I think the information you are seeking is sometimes available, depending on the policy of individual police forces.

I have the comments before me. I know most members will recall, but they talk about descriptions of people who are under investigation. One of the police officers said: "We can publish the description. We should do that for protection. We are getting better at that. We will get better at that. It will help to make the community safer." One of the other police officer's said, "In my personal view, we are obligated to put that description on the street." But they said there was nothing in this legislation to compel them to do so.

I think you are right that we need some clearer instructions or climate, let's say, in terms of doing so, in a way that is appropriate for Metro, in the case of your concern, or Welland or whatever jurisdiction we are talking about.

I would suggest that your brief be sent to the Solicitor General (Mr Offer) to let him know your view of the matter. He is in charge of the police, has direct authority for the Ontario Provincial Police and can send policy directives to other police forces.

I know there is a new Police Act being worked on and I think some of your suggestions, such as having a community advisory board, would be just excellent. It would be an excellent idea to incorporate in the new legislation and that would be a way in which someone like yourself could not just appear before the police commissioner from time to time but could have some long-term input into police policy. That is the kind of suggestion I would like to see incorporated into the act.

In some of your other suggestions, things like making sure that in every case of a sexual assault as much information as the police had was made available to the community, there may be some problems with it in some circumstances but I think it is a good overall principle and I think the Solicitor General should look at that as a possible guideline to send out to municipal police forces.

I know the Solicitor General has sent out guidelines on other subjects, such as hiring police and not just looking at how tall they were. That helps recruit more women and visible minority members. Instructions have been given to charge people who have committed spousal assault. They have been relatively successful, maybe not in all cases, but they changed the climate of police activity.

One way we might handle this would be to send it to the Solicitor General and ask for his response, whether it comes through amendments to the Police Act or guidelines or some other way. I think the deputation has pointed up a real

problem, one that is of concern to many women, not just in my riding or the city of Toronto but throughout the province, and I hope we can get some answers for this group, perhaps in addition to possible amendments to this act. I think we should try to get some positive answers for members of this group.

Mr Faubert: I have one quick question. The brief mentions the recommendation of the Safe City report of the city of Toronto in 1988. Have you appeared before the police commission and have they given you any response related to this request?

Ms Abrahams: No, not yet.

Mr Faubert: But you intend to, do you?

Ms Abrahams: No, we do not.

Mr Faubert: I agree with the comments by Mr Kanter, because some time the availability of information is not the policy of the police force itself but simply of the officer in charge of each division, because there are conflicting problems. One circumstance I had was the Scarborough rapist, in which, after the third attack, I asked that they publish the description of the person and they said, "No, it would impede the investigation." Yet, two months later, they published it. It seemed there was no difference, except in time. It seemed that an early publication was something that a lot of people requested.

I would urge you to appear before the commission and ask why that information is not published in the manner in which you want it, because I can see why you want a map location. It would be effective information for you.

The Chair: There are about two minutes left in the allotted time. Are there any other questions or comments or do the presenters want to do any brief wrapup?

Ms Anderson: I would like to reply to Mr Faubert's comment. Because of the variance that I already pointed out, I think this is why it should go beyond Metropolitan Toronto, as I am sure all these variances appear all the way across the province. I read the police report on race relations and it seems there are inconsistencies. I think it would be something the provincial government should seriously consider as having some consistency through the Police Act as to what happens provincially and filters down to the municipal level.

I think the confusion people find at the city level, to repeat myself, exists on a provincial level and I think that is why we are here. We are not just doing it for the people in our little community or for the city of Toronto. We are doing it for the women in the rest of the province. That is why we feel it is important that we really speak about this act and what we feel it should provide.

The Chair: Thank you. The allotted time has been filled. I thank the presenters for their written brief and for their presentation today, and I am sure the committee members will give their comments serious consideration.

Do we have representatives from the Ontario Separate School Trustees' Association? I would ask you to come forward and take the appropriate seats and identify yourselves. We have allotted 30 minutes for each group's presentation.

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

Mr Nyitrai: Mr Chairman and members of the committee, thank you very much for having us appear before you. I am Ernie Nyitrai, the executive director of the Ontario Separate School Trustees' Association. Beside me is Caroline DiGiovanni who is the director of research for our office. Caroline will be making the presentation and we will be both available for comments and questions afterwards.

Mrs DiGiovanni: Thank you very much and good afternoon, ladies and gentlemen and Mr Chairman. The Ontario Separate School Trustees' Association represents 54 Catholic separate school boards across the province. On behalf of our member boards, we are pleased to have this opportunity to address you today on the proposed Municipal Freedom of Information and Protection of Privacy Act.

In opening, we would like to convey to the committee our support for the general principles of the proposed act. Both separate and public boards as institutions occupy prominent places of trust in their local community. To maintain a high degree of credibility with the ratepayers, it is essential that boards remain accessible and accountable for the decisions they make. This legislation will ensure that boards fulfil their obligations of accessibility.

1700

We understand that some boards will have to make adjustments to some facets of their operations in order to meet the requests that may be forthcoming after January 1991. New personnel may be required in the records department; new administrative duties may be added to certain departments. Elected members of the boards will have to understand their responsibilities for properly delegating information and privacy procedures and for the ultimate disposi-

tion of items under dispute. The boards appreciate the lead time that has been allowed to study the new bill and the opportunity to have ministry assistance in preparing to implement it.

That is the good part. Now that you are all warmed up, we have only one concern in the clauses of the bill and I would like to bring it to your attention now, because we hope the legislators will revise at the committee stage, before the law goes through, the section we are concerned with. It may not seem like a significant change, but we are aware from past experience that if a loophole like this goes unnoticed, the first instance of challenge could well consume many hours of staff time.

Section 36 of the bill allows individuals to have access to any personal information about themselves contained in a personal data bank in the custody or under the control of an institution. The individual is entitled to request a correction of the information, clause 36(2)(a); require a statement of disagreement to be attached if the correction is not made, clause 36(2)(b); require that anyone who has had access to the information be informed of the correction or disagreement, clause 37(2)(c). Under section 39, a person may appeal any decision of a head under this act to the commissioner, if the request has been made within the terms of the act.

The OSSTA certainly concurs with the drafters that the act ought to include a section on the right of access to one's personal file and the opportunity to correct information or attach a statement of disagreement. We want to point out to you, however, that a conflict could arise between this section and a section of the Education Act which deals with access to student data files. We describe the conflict here and we recommend that the committee insert a clarification of which act will take precedence.

Section 237 of the Education Act covers the subject of pupil records. Subsection 237(2) states: "A record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record...subject to subsections (3) and (5), is not available to any other person...without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil."

Subsection 237(3) states that the pupil, parent or guardian is entitled to examine the pupil's record. Subsection 237(4) makes provision for the adult pupil or the parent or guardian of a minor pupil to request a principal to correct information that has been inaccurately recorded or to remove from the record information that is not conducive to the improvement of instruction of the pupil.

You will note that the phrase "improvement of instruction of the pupil" is used in reference to the student data file. This gives a framework for the procedures set out in subsection 237(5) to be used in cases of disagreement between the principal and the pupil, parent or guardian. If a principal refuses to comply with a request for a change under subsection 237(4), the requester may, in writing, require the principal to refer the matter to the supervisory officer, who shall either require the principal to comply with the request or submit the record and the request to a person designated by the minister. It is this person who shall hold a hearing to decide the matter, and his or her decision is final and binding upon the parties.

The difference between this appeal procedure and section 36 and section 39 of the Municipal Freedom of Information and Protection of Privacy Act lies in the context in which the appeal is contained. The Education Act keeps the whole process in the hands of qualified educators up to the final hearing before a person designated by the Minister of Education.

As an association of school board trustees, it is our duty to protect the best interests of the pupils within our system. Student data files require scrupulous attention to ensure their accuracy and relevance and to maintain their complete confidentiality.

We believe that subsections 237(4) and 237(5) of the Education Act allow for both fairness and professional competence in dealing with requests for amendments to student records.

Therefore, OSSTA recommends that the Municipal Freedom of Information and Protection of Privacy Act, 1989, exclude pupil records from the operation of the act.

In conclusion, we would add the comment that in general the language of Bill 49 reveals a closer affinity to municipal councils than to the work of school boards and other boards. For example, a final editor should enhance references to bylaws by adding "and resolutions," because that is a more familiar term to many boards.

Thank you for your attention to our concern about access to student records and to language that broadens the municipal scope. We look forward to the final version and we are willing to answer questions.

Mr Kormos: If I may, I am wondering if the minister here can tell us whether or not the

Minister of Education (Mr Conway) or his staff has commented on some of the issues raised by these people.

Hon Mr Elston: They have, actually. They see the system as working relatively well in parallel. They do not see that the two would cause undue strain on the system. I think the issue of having somebody who is a qualified educator involved until the final phase is the major concern, although I do not see that the commissioner–he has had a fairly good track record in being well informed and not really tripping over into areas of expertise that have offended people in the provincial context. I think there is a sense throughout the ministry that it can be managed. That is the reaction we have had so far.

Mr Polsinelli: Perhaps a question for the minister. Would this bill allow a student who undertakes the appeal procedure under the Education Act, assuming there is a negative resolution of the problem–that is, that the student is unhappy with the resolution–could he still apply under the freedom of information act to include a statement of disagreement in his file?

Hon Mr Elston: He could verify under the freedom of information act whether or not the filing had actually taken place. Do you mean if there is an amendment attached that he or she disagreed with?

Mr Polsinelli: No, but assuming that he goes through the appeal process under section 237 of the Education Act. The person appointed by the minister could make a decision or an order that is final and binding. Now, if the student were unhappy with that order, could he still, under the freedom of information act, attach to his record a statement disagreeing with whatever is in the record?

Hon Mr Elston: He would be able to go under the freedom of information act to see, first of all, whether or not the changes that had been requested were made. If there was an order made, for instance, he would be able to verify that. Second of all, if the order he was seeking was not made, he would be able to find that out. I do not know whether or not he could substitute the freedom of information commissioner for the person named. You would have to check into that one, because I am not sure about that. It is a good question.

Mr Polsinelli: Do you understand the context?

Hon Mr Elston: I understand what you are saying, whether they can get indirectly what they could not get directly through the Education Act.

Mr Polsinelli: Right.

Mr Nyitrai: That is really the point that I think we were attempting to address in the presentation we have made. If indeed the student was not able to obtain that which is available to him currently under the Education Act, and there is not some indication or some comment or some point made to which of the two acts may take precedence, then the point Mr Polsinelli raised causes some confusion and could be interpreted in more than one way.

Hon Mr Elston: As I answered Mr Kormos, the people at Education did not see this as a difficulty, but we will sort it out. It has to be cleared up.

Mr Polsinelli: At this time, I would ask a question of the presenters, because quite frankly, even if the student applied under the Education Act and an order was made not to change the records, what would be the problem with the student attaching a statement of disagreement to his record?

Mrs DiGiovanni: That is provided for within the terms of section 237. I did not spell out exactly word for word, but they can attach a statement to their record. I might also add that it is very rare. In searching around for precedents to this, it is really very rare that it goes to a designate from the Ministry of Education. Most of these concerns are handled at the local level or at a supervisory officer's level, so it is really just to close a loophole before we get into–

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Mr Polsinelli: Effectively, what you have are two parallel systems, and both accomplishing the same result.

Mrs DiGiovanni: Yes, that is right, but under the Education Act, if you could allow that always to take precedence with regard to student files, it would always be kept within the context of education.

Mr Polsinelli: I see your point.

Mrs DiGiovanni: I think that is our concern.

Hon Mr Elston: If I could just note, Mr White had advised me that the student can still, although not getting an order, file a notice of disagreement about the record under the Education Act, so your question initially would be answered. He could do it either way, under either freedom of information or the Education Act, but he could not get an order amending the record, which was, I guess, the one that I was mostly concerned about. We will check out to see how the act deals with that issue, which is like a

formal order saying the thing ought to be amended.

Mr Faubert: Just one last point. Perhaps the minister could comment on it. It relates to the conclusion about the reference to bylaws and adding the word "resolution," if that does not create a problem. The interesting thing is, too, councils do operate by both bylaw and resolution. I know boards operate by resolution.

The Chair: I am sure that technicality will be looked into.

Hon Mr Elston: Sure. We will try to make sure we have "resolution" at each juncture. We try, but we may have missed it in some places, so we will try to fix that up.

Mr Nyitrai: To that point, we have been fortunate enough to be involved with a working team that is preparing the booklet that is going to be going out to the municipal councils. In that, although it would be made available also to local boards and commissions, the terminology that we noticed in the drafts that we were looking at seems to lend itself much more to municipal councils than it would to school boards.

Mr Matrundola: I was just wondering, where it says here on page 3 of your report: "As an association of school board trustees it is our duty to protect the best interests of the pupils within our system. Student data files require scrupulous attention to ensure their accuracy and relevance and to maintain their complete confidentiality."

I am just trying to find out what you are trying to allude to by that. Does it mean that nobody can go into the school to look at the file of a certain student?

Mrs DiGiovanni: That is right, only the parents, the adult student, or the principal of the school, supervisory officers and people who are committed to having access. An individual who is not one of those named does not have access to the student data file.

Mr Matrundola: But the student will be able to have access to his or her own file; also the parents.

Mrs DiGiovanni: Yes. The student, as an adult, or the parent or guardian of a minor student.

Mr Matrundola: I believe that makes sense, because really it is none of my business to go and find out how your son or daughter is doing at school, and neither is it your business to find out how my son or daughter is doing at school. That makes good sense, I think.

Mrs DiGiovanni: Thank you very much for listening to our concerns. We appreciate the reception.

The Chair: Are there any other comments? Mr Kanter, did you have a comment?

Mr Kanter: No. After they leave, I have a question about a previous presenter.

The Chair: I think that concludes our business for today. I want to thank the presenters. It was a very thoughtful brief and I think it will be helpful to the committee.

Mr Kanter, you had further business?

Mr Kanter: Yes. Just further to my comments on the Annex Women's Action Committee, I am wondering if the clerk could perhaps prepare a covering letter to send the Solicitor General (Mr Offer) that the committee as a whole could approve. I think there was general consensus that is what we should do. Perhaps if the clerk could prepare it, we could formally approve it at our next or some subsequent meeting.

The Chair: I suggest perhaps that if the clerk can prepare it for tomorrow, we can approve it either before or after the session tomorrow and the letter can go with the appropriate material.

Mr Kanter: Good. Thank you.

The Chair: The meeting is adjourned for today until 3:30 tomorrow afternoon.

The committee adjourned at 1715.

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Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Municipal Freedom of Information and Protection of Privacy Act, 1989

Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée

Municipal Freedom of Information Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 28 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 28 November 1989

The committee met at 1539 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989
(continued)

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION MUNICIPALE ET LA PROTECTION DE LA VIE PRIVÉE
(suite)

MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989

Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Chair: I would like to call the committee to order. I want to say to the members of the committee that after the second presenter has completed and we have finished asking questions, there will be a brief business session afterwards to consider a subcommittee report on committee business. I will mention to the presenters that we have allotted 30 minutes for each presenter and that time includes questions from committee members, so if you will try to leave some time at the end of your presentation within that 30 minutes for the committee, we would appreciate it.

The first group we have today represents the city of Toronto and I believe the representative is Dennis Perlin, who is the city solicitor. I would ask Mr Perlin to please identify himself officially, and the gentleman who is with him.

CITY OF TORONTO

Mr Perlin: I am Dennis Perlin, the city solicitor for the city of Toronto, and with me is Greg Levine, who is a lawyer in the legal department of the city of Toronto and who did a lot of the basic work with respect to this particular matter and hopefully can answer or help me answer any of the questions.

We have a report that was submitted to you. It was mailed, so we have had to bring it up to you and I think it is being circulated now. It is a report that was presented to city council and it is essentially the brief that I wish to present to you. We have done some further work, and I want to mention a couple of other matters, since this particular report was prepared and we have had the opportunity to go through the act one more time.

We appreciate that the Legislature has already given approval in principle and has passed the Municipal Freedom of Information and Protection of Privacy Act before this, so there is not much that municipalities can do with respect to this particular issue, but I will say the general feeling is that we are going to have extra bureaucracy and extra expense as a result of this particular legislation and we are going to have some formality in terms of access of information that was not experienced at the municipal level previously, and some delay.

Our experience has been that information has not been that difficult to obtain at the municipal level. I have had the pleasure of working all around this province over the last 19 years and I have not seen a problem with respect to access of information at the municipal level that has not been solved politically when it has become a difficulty.

But the bill is here and we would like to suggest in a constructive way some suggestions that could be helpful to us at the municipal level if the changes were made. I will go through the brief in order, although some points are very technical and some are substantive.

We begin the brief with respect to the definitions of "institution." We start there not so much asking for an amendment to the definition of "institution," but rather we are asking the committee if it would make a recommendation to the government that, because part of the definition in clause 2(1)(c) is that an institution could be "any agency, board, commission, corporation or other body designated as an institution in the regulations," where designations are made, there should be consultation with the municipalities before a regulation of designation is passed.

In the city of Toronto we have numerous boards and commissions, and many municipali-

ties have them, whether they are business improvement area boards or boards of management for recreation centres or the nonprofit housing corporation, called Cityhome. With the enactment of the act, we are planning to have all those under the city's regime with respect to freedom of information and protection of privacy. If they are to be separate institutions and have to have their own regime, then it would be helpful if there were some consultation, because it will provide some difficulties. There is no change asked for in the legislation per se, but a request to the government to consult with the municipalities before designating any particular institutions, because they do have some specific problems at their level.

In terms of the second issue, which is the definition of "personal information," what we are suggesting in the "personal information" definition is that we have seen in our analysis of the bill some ambiguity that could lead to some confusion between the definitions of "personal information" in subsection 2(1) and clause 14(3)(h), and that is dealing with the reference to personal, religious and political affiliations.

If one looks at clause 14(3)(h), it states that the disclosure of personal information is "an unjustified invasion of personal privacy" if that information "indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations," and I stress the word "associations."

There is no mention, however, in subsection 2(1) of religious or political associations. Beliefs, if you like, may be covered by "personal opinions or views" in clause 2(1)(e), but as to religious or political associations, we think that it would be helpful and less confusing if that expression was added to clause 2(1)(a) and that it would avoid some confusion, so that the definition of "personal information" would be "information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual or the religious or political associations of the individual." That would therefore provide consistency with clause 14(3)(a).

In terms of a third matter, the exemptions, we come to the part of our brief that is the one that is most substantive. It is a request to amend subsection 6(1) of the present legislation to divide it into two to provide that "A head may refuse to disclose a record (a) that contains a draft of a bylaw or a draft of a private bill." For the most part, in my experience, those have always been made public, but it is the second one that concerns us,

"(b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

Our suggestion is that that be a mandatory requirement, that

"A head shall refuse to disclose a record that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

The reason for that is that, although we agree with the flexibility that is in the bill with respect to the definition of "head" allowing it to be an individual or to be a committee of council or to be a council, the difficulty we have is that in order to do release of information in a timely fashion, it may be advisable to have a committee of council handling it. Individuals who sit on committees of municipal councils are not, for the most part, part of a caucus or subject to party discipline or any cabinet oath of secrecy with respect to matters that are to be dealt with in camera. In many cases, they believe that even though they are members of a committee they are individuals and will be the head, as far as they are concerned, if they are individuals on that committee, and it will be very difficult to prevent the release of information which is determined by statute or by bylaw should be confidential.

For the most part at the municipal level, confidential matters have been in four levels: basically personnel matters; land acquisition matters where the negotiation price could lead to land speculation; personnel matters in terms of recruitment and dismissal; and litigation strategies and security matters. Those have been the four major headings at the municipal level.

If information is released, it could do significant damage to the public trust, well beyond what can happen to an individual councillor. I think that where a council has set a requirement that the matter be considered in camera, that should only be released if the council or the board or the commission as a whole, as the case might be, authorizes its release. I think it is just as important as the requirement that is set out in sections 9 and 10 of the bill, which provide that a head shall not disclose information from other governments or trade secrets, etc.

I am going to ask that a particular article that appeared in the Toronto Star be handed out, if I

could. This is a column in the Toronto Star yesterday that dealt with the recruitment of a new commissioner of city property and the release of information that was completely done in camera and, contrary to the bylaw, has been released. Unless you provide for a mandatory requirement that it shall not disclose without the prior consent of the council or board or commission, I think the new bill will provide great difficulty at the local level.

This particular person's career is badly upset, the future recruitment procedures of the city are badly upset, and I think leaving it that a head "may refuse to disclose a record" is not going far enough and it should be "shall refuse to disclose a record," just as is the case in the provincial bill with respect to cabinet matters and just as it is in the bill with respect to matters that we must respect at the municipal level in terms of information given to us that is confidential.

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I also think that in terms of the substance of deliberations there is a need for a definition, so we have suggested that not only should subsection 6(1)(b) be amended, the new subsection 6(2) should provide that "A head,"–and I have no problem with adding the words, "unless the council, board, commission or other body determines otherwise"–"shall refuse to disclose a record that reveals the substance of deliberations...."

We also think that a new subsection 6(3) should be added to clarify the substance of deliberations,

"A head, unless the council, board, commission or other body determines otherwise, shall refuse to disclose reports, memoranda and other written material prepared exclusively for use in a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

One other request that we would make is a technical one. That is that those two provisions, even if the provision stays the way it is in subsection 6(1), have not only "a statute" but "a statute or bylaw thereunder," because we would pass our provisions with respect to matters that should be dealt with properly in camera under the procedure bylaw under section 104 of the Municipal Act. That is the provision under which we are able to enact that, so it is not an actual provision of the statute that requires something to be done in camera, it is a bylaw that is then passed thereunder. For the most part, any commissions, boards or agencies would use their own legislative powers to create those matters that should be dealt with in camera.

In section 9 of the bill, the relations with governments sections, we are suggesting a change to add to that provision that it should clearly state that information received in confidence from other municipal corporations and other institutions covered by the bill should be exempt and perhaps the title changed to "Relations with Governments and Municipal Institutions." The new clause that we are suggesting would be an (f) to be added to subsection 9(1), which would be,

"A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from...

"(f) any institution defined as such in subsection 2(1)."

In terms of one other addition to this particular brief as we go through, if one is to change section 6(1) as we have suggested and provide for mandatory prevention of disclosure of matters that are required to be held in camera, then subsections 7(2) and 7(3) would each have to start, "Despite subsection 1 but subject to subsections 6(2) and 6(3)," to ensure that that information is not released.

You have a lot of information in subsection 7(2), like valuator reports and performance of an institution, when we have had management studies that in many cases lay out the information related to the performance of individuals in order to properly carry out a performance evaluation of an institution; that matter should not be made public. Again, most of that would be covered off by making it mandatory that matters in camera not be released, because most of those go to in camera sessions and then are released by council in the context in which they should be.

In terms of section 13, we cannot figure out what section 13 applies to at the municipal level.

"A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual."

We have looked very carefully at the type of records we have, and frankly, any examples we have received have been matters that are in the federal or provincial domain and are not records that the municipality has. If we cannot figure out why it is there, by the old "If you don't know the mischief, then what's the provision," we think it should be eliminated, or at least clarified.

Subsection 14(5) states, "A head may refuse to confirm or deny the existence of a record if

disclosure of the record would constitute an unjustified invasion of personal privacy."

We are suggesting that this particular section be clarified because it may contradict the requirement that the kind of information contained in personal information banks be published. An individual would likely know if certain information has been collected because of the personal information bank requirement. How could the head logically deny existence of the record? Conversely, if it is a record not referred to in personal information bank indices because it is not part of a collection, nondisclosure might in itself constitute an invasion of privacy which is contrary to the spirit of the bill. It seems as if this subsection could be used to deny access by an individual to a record about that individual.

This is especially so if it has been collected illegally, contrary to sections 28 and 29 of the bill. If the collecting itself was an invasion of privacy, surely that illegality should not be able to be compounded by subsection 14(5). So we suggest it be eliminated as unnecessary by virtue of subsections 14(1), (2), (3) and (4). Also subsection 14(5), if it stays, will take away from the right of access under clause 36(1)(b), in our opinion.

In terms of the access procedure, which is our seventh suggestion, subsection 18(2) puts the onus on municipal institutions to redirect inquiries that are more appropriately dealt with elsewhere. Given the plethora of provincial and municipal institutions, some limits should be put on this obligation. If the head cannot determine what the appropriate route of inquiry is within a period of time which does not incur undue use of the institution's resources, the head should be relieved of the obligation to forward the request. We are recommending that a clause be added to subsection 18(2) which states, "If, within five days, the head is unable to determine what institution has the information then the head shall notify the requester that this is the case."

In terms of protection of privacy, at the bottom of page six of our brief, the first thing we raise is a concern with respect to section 30, and that is more of a request, again, to deal with subsection 30(4), "A head shall dispose of personal information under the control of the institution in accordance with the regulations."

Our request there is similar to the one I opened with, and that is if there is to be a regulation under subsection 30(4), this committee recommend to the government that it consult with municipalities in terms of that type of regulation. There are set procedures with respect to the disposition of records in most municipalities and various retention periods and various programs with respect to retentions that are designed for those, and it would be helpful if there was consultation prior to the enactment of a regulation. That is the only suggestion there, not to change the legislation, but just a request that the municipalities be consulted.

We are suggesting clause 36(1)(b) should be clarified as the institution is not permitted, as we read the legislation, to have essentially personal information other than in the personal information bank. Thus, on the face of it, clause 36(1)(b) is not necessary. There should be clarity as to the types of information an institution is allowed to keep which will not be noted in the indices of personal information banks. Otherwise, we think 36(1)(b) should be eliminated as it tends to suggest something that should not be if the act has been followed to that point. We think 36(1)(a) covers the situation and 36(1)(b) confuses it.

The next section is financial assistance. The passage of implementation of Bill 49 will bring into existence a much more formalized access-to-information procedure. In the city of Toronto, our analysis is it will necessitate an FOI co-ordinator with a couple of staff from the clerk's office, additional office space, designated staff in other departments and special forms. It will be an additional cost and financial burden on the municipality, and while fees can be charged in response to FOI requests, they will not likely be full-cost fees, or else the fees will discourage FOI requests, which surely is not intended.

To assist municipalities to implement Bill 49 initially and over a period of time, the province should make FOI grants to minicipalities to cover the FOI cost. FOI has rarely, if ever, been a real problem at the municipal level, but if the province perceives a problem then it should pay or at least help to pay for its solution. Thus a new section should be added to the proposed act, "The minister, out of moneys appropriated therefor by the Legislature, may make advances, grants and loans, and provide any other financial assistance to assist in the implementation and administration of this act."

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It is important to remember that section 45 requires criteria for waiver. It allows for appeals on fees to the commissioner. I think as a startup, as a help to municipalities in getting this started, some grants should be made. Obviously this committee cannot make them, but at least the

legislation could be changed to allow the government to provide for the grants which the legislation does not at the moment provide.

Two other small things: In the "offences" section, section 48, if one goes with the mandatory prevention of disclosure of information of matters in camera, we suggest that there be an offence provision in section 48 that no person being the head, or a member of the head, shall disclose a record contrary to subsection 6(2) or subsection 6(3) of the act. Indeed, we think an offence provision should be there for sections 9 and 10, trade secrets and government information.

Subsection 50(2) is our last recommendation. We suggest the elimination of the words "custom or practice" from subsection 50(2) and just to stop at "statute", because I do not what custom or practice is at the municipal level. I think we are going to create an awful lot of confusion by putting in those words that there can be access by "custom or practice." We are just setting up litigious or confrontational matters and appeals. It need not be said; it could just stop at the word "statute" rather than going on to the words "custom or practice."

Hon Mr Elston: I might just note a couple of things. For instance, with respect to one of the issues that was raised, if we were going to designate an agency as an institution, certainly we would be consulting people, although there are certain situations described in the statute already which mean that the agency would be part of the municipality. For instance, if all the members are municipal members, then it is going to be your body and it would be included under the statutes. So there are some areas, I think, where that would occur already under the legislation, but where new circumstances arise we will be asking for advice.

I know you have seen the list that has been proposed, and if there were any concerns there expressed or to be expressed, you could perhaps tell us.

Mr Perlin: We have not seen the list.

Hon Mr Elston: Oh, you have not seen the list of police commissions and that sort of stuff? I am bit confused. We did release a consultation paper that talked about–

Mr Perlin: Oh, the consultation paper? That is the same list you are considering?

Hon Mr Elston: Yes, you have seen those ones.

There was a fairly animated presentation here yesterday from a newspaper editor, not from the Toronto Star, although we do read the Star here at the Legislative Assembly, and others.

Mr Sterling: I do not.

Hon Mr Elston: Well, all of us do. Mr Sterling says that he does not read it, but I am going to go out and get him a subscription. He could broaden his views.

In any event, we had a presentation yesterday where the editor of a weekly had suggested that there be an end to all closed meetings, in the sense that he could have access to the information. He found that the Education Act and the Municipal Act were much too generous with respect to closed meeting opportunities, just to let you know there was a contrary position presented to us yesterday. I am sure the committee will be deliberating on that one.

Mr Perlin: It is not contrary. We are aware of that particular submission. Our submission is this: If one proceeds with respect to an amendment to the Municipal Act or whatever to set up certain procedures, if you are going to tell us precisely what we can do and what we cannot do with respect to in camera or not in camera meetings, so be it. But once that is set, our suggestion to you, sincerely, is that subsection 6(2) should provide that a head shall not disclose that information.

I understand he was speaking to the issue of whether there should or should not be anything in camera and how much. I suggest to you that most would consider it reasonable that the type of things I mentioned–property negotiations, personnel matters, etc–would be in camera, as they are at most levels of government. Whatever is allowed to be in camera, once that occurs, unless the full council, board or commission agrees to have it released, it shall not be disclosed. Not "may" refuse to disclose, but "shall" refuse to disclose unless the full council, board, commission, etc, determines otherwise.

I would just indicate to you the type of problem we can get into, as I tried to do in the article, when that does not happen. You are opening up a heading that allows the head a delegation, etc, you are allowing for delegation and flexibility, which is fine, to allow for efficient operation of the act. Terrific, but in that case, just as you do not allow for a "may" under the provincial act for cabinet matters, matters that are dealt with in camera at the provincial level, this act should not allow for a "may" when it comes to municipal matters. That is all we are suggesting to you at this point. Maybe we can have a debate at some future date on what should or should not be in

camera and how much the municipality should be regulated by the province in that matter.

Hon Mr Elston: I think if you review the response to the presentation yesterday, it was basically that the issue about the closed meeting and the items to be contained there are best dealt with, at least in some views anyway, through Municipal Act discussions per se as opposed to through this piece of legislation. But your point is interesting for us.

With regard to the issues about which you have raised concerns, particularly health and safety, I think there is the possibility that reports can be made from something like the health board and other things wherein personal information may be contained.

With regard to the issue about where personal information is available or held by the municipality in something other than an index of information, it could be, for instance, in the form of a letter sent and otherwise available but not housed in an information bank in particular.

It is those sorts of situations, which may not be happening a lot but which can happen, that we want to cover off as much as possible, so we make the point that the privacy part part of this legislation is every bit as important. In fact, probably in some cases, as you have pointed out, it may be more important than some people would care to admit.

The Chair: Are there any other comments? I might add that we have about another two minutes left for this particular session.

Mr McGuinty: First of all, I want to thank you for a very thoughtful, precise analysis and paper here. I am a little confused, however. Section 2(1) refers to information regarding religion, but then on page 3 in paragraph 4 you state, "It should unequivocally refer to personal religious and political affiliations." Is religion not already covered here?

Mr Perlin: I am sorry. I should have stressed the word "associations." What is covered is the information relating to the race, national or ethnic origin of the individual, but not, if you look at clause 14(3)(h), information related to a person's political or religious associations. That does not tie back in with the personal information definition. We are suggesting that you just add the word "associations" so that particular piece of information about an individual–that is, his or her political or religious association–also be considered personal information in the definition as well as the other information, and then it carries on thorough the rest of the legislation quite well. We are just suggesting you add that phrase there as you did in clause 14(3)(h).

The Chair: On behalf of the committee members I would like to thank you, Mr Perlin, for your very thoughtful brief and presentation. I am sure it will be very instructive to committee members when we embark on our clause-by-clause consideration of the bill.

The next presenter will be the Metropolitan Separate School Board. I believe Hugh Kelly, the solicitor, will be making the presentation.

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METROPOLITAN SEPARATE SCHOOL BOARD

Mr Kelly: I am Hugh Kelly. With me this afternoon is Guy Léger who is superintendent of education, information services, and chairman of the Metropolitan Separate School Board freedom-of-information and protection-of-privacy task force.

The clerk is passing out to you at the moment copies of the written material that we propose to present. I do not propose to read it unless you prefer it, but I would like to just take you through it, if I may, to indicate the–

The Chair: The thirty minutes is yours to do with as you wish.

Mr Kelly: On the first page, we identify what the Metropolitan Separate School Board is and its focus of incorporation. The board has been in existence for a century and a half and in that time has educated literally thousands of children.

On page 2, we indicate our basic position, which of course is in support of the purposes of the bill. We support both the purpose that public accountability requires the operations and activities of the board to be subject to public scrutiny and the concept that personal information should be protected.

Our thesis is quite simple, and that is that the existing protection and access provisions under the Education Act are much more appropriate in the case of pupil information than the Freedom of Information and Protection of Privacy Act.

We would like to draw your attention to a rather fundamental distinction between school boards on the one hand and other bodies that are included under the purview of this act. Information regarding things–school sites and buildings, furniture, furnishings, supplies–is only incidental to the principal activity of school boards. The vast majority of information collected by a school board is from and about pupils and others, all of which information would fall into the category of personal information.

We go on and contrast this with the situation of other municipal bodies where, with the exception perhaps of health, welfare and law enforcement agencies, they are concerned with information related to groups as opposed to individual persons. We are not suggesting that school boards are dramatically different as far as personnel matters are concerned; it is just that the level of information, the volume of information collected by school boards is individual and personal information as opposed to group information.

We point out on page 4 that the primary factor that distinguishes school boards from other municipal organizations is that for every employee for whom personal records are maintained, school boards have between 10 and 20 times that number of pupils and therefore 10 to 20 times the number of records containing personal information respecting pupils and their families.

Under the heading "Collection Continuous" we address the concept which we think distinguishes school boards quite dramatically from other municipal organizations, and that is that the collection of personal information is continuous. From the time a child first attends school, perhaps even before that at the junior kindergarten level, personal information is collected and it is a continuous process throughout the whole of the time that pupil remains in a school setting.

Thus the task of the school authorities is to collect and manage personal information effectively on a nonstop basis. The information is attained from a number of sources but the principal source is from the pupil himself or herself.

On page 5, we try to draw you through the process of what happens to a child. In the early identification program, a child attends at the junior kindergarten level at age four or five and information is collected starting then. Constantly during the teaching day and in the course of activities teachers and other board staff interact with pupils in a process that, again, collects personal information.

Starting at the latter end of the primary division–this is what we would refer to as probably grade 3 level–and with increasing frequency thereafter, pupils are required to demonstrate the extent of what they have learned. This is done through informal testing, quizzes, assignments, formal examinations; all activity that is included in the concept of a collection of personal information.

Last, parents, guardians and family members are invited at times to interviews with teachers following the issue of achievement forms and at other times during the year. Thus, on a typical basis, between five and 10 times per year per pupil there is an exchange of information between the school and the parents or guardians.

Starting at the bottom of page 5 and continuing on page 6, we draw to your attention some of the statistical size of this board: 103,000 pupils, 10,000 staff and 225 schools. We give you the statistics of its growth since the time of its incorporation by this Legislature in 1953.

One of the corollaries of this is the amount of personal information that is generated. Even if you do not consider the vast volume of teachers' notes, test papers, pupil assignments and other material that a teacher in the normal course of events would be generating or causing to be generated, we give some statistics as to the amount of current material the board would possess.

These are not individual records but these are files of records. Any individual record or any individual file might contain from a few pages to literally hundreds. As a superintendent, Mr Léger can tell you that there are times when pupil files become an inch or more in thickness, and that may represent several hundred pages or records within the definition of the section.

In addition to this, files contain information about families. Those also are personal information records. It is difficult to give an accurate estimate, but we think there are probably about 250,000 files currently.

In addition, we have personal information respecting staff on the present level of about 10,000 current staff members.

One then goes and looks at the storage material; that is, noncurrent material. We point out at the top of page 7 that there are probably files–and again I emphasize that these are not individual records but files of material–affecting somewhere between 250,000 and 300,000 pupils, to which must be added the family members who are equally involved at this level, and we guesstimate, and it is clear that it can only be a guesstimate, about 500,000 to 600,000 additional family members.

In addition, cumulatively, because of the number of employees over its history, there would be files–again not records but files–on about 20,000 past staff members.

The point we are trying to get at with these statistics is what we try to point out in the middle of page 7, and that is that, unlike most organizations, about 20 per cent of our information is nonpersonal; about 80 per cent, we

estimate, is personal information through the normal educational process.

Starting partway down page 7, we tried to take you through how pupil information is used. I am sure you will be aware from your own personal experiences as a pupil that classroom work is generated, homework is generated, assignments are required, the teacher is constantly acquiring material that comes under the definition of personal information.

Some of that information is publicly displayed. It is displayed on blackboards, on bulletin boards within the classroom, it is displayed on boards that are display boards for the school itself and, of course, in region and board offices and frequently in public displays throughout the community, sometimes even to the extent of national fairs. All of this material would be swept into the definition of personal information.

Then there is other classroom work, not publicly disclosed, that includes tests and like material generated by the teacher to assess the progress of the pupil throughout the process. Those would be the more routine daily or weekly kinds of testing that the teacher would put the child through.

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In addition to that are the more formal examinations that produce formal records that become part of the Ontario student record, or using the acronym, the OSR. The OSR folder is prescribed under the regulations under the Education Act and under that act certain information must be put into that record folder, and that includes some of the achievement forms–clearly personal information.

Finally, there is special-services information generated by psychiatrists, psychologists, social workers and other specialist consultants who may be called upon to assist children at one stage or the other throughout their career. It has been estimated by the Shannon report–although that is not a recent report, the statistics are probably valid–that about one child in 10 requires some additional assistance, and therefore even more personal information is generated.

Although for obvious reasons there is not a high degree of security attached to those items I referred to first–that is, the material that is displayed in a classroom and what the teacher might have in a folder–there is a progressively increasing degree of security afforded to the remainder. The OSR is almost invariably kept in a locked cabinet in a principal's office or in the outer office but an area to which the public generally has no access. In the case of the psychiatric, social worker or psychological files, those are kept under the control of the respective professionals.

What we suggest is that the requirements of subsection 237(2) of the Education Act are more than adequate to provide for the purpose of the generation of that information and for its control and access. Attached is an appendix for your convenience. We have included section 237 of the Education Act, and in a moment I will take you through some of the salient features of that, if you wish, but suffice it to say that the various subsections of that section provide a very high degree of requirement of secrecy and security and privacy and for access for correction purposes and a requirement that those who have any access to that information maintain secrecy.

What we suggest is that the provisions of Bill 49 are really quite appropriate to some forms of information, but we suggest that it is not appropriate for pupil records. What we are concerned about is that if a new set of criteria is imposed upon a school system that does not expressly tie both the generation of personal information and its use to the educational process, then the result may be a detriment to the very people we are trying to protect, and that is the pupils.

As a result, on page 10 we set out an amendment which we suggest it would be appropriate for this committee to recommend, and that is, "Part II of the bill does not apply to personal information that is maintained for the purposes of a record within the meaning of the Education Act."

Perhaps I could just take a moment and review with you what section 237 of the Education Act does provide. Subsection 2 is the most crucial point, because it creates a protective mechanism that, to the best of my knowledge, is not found in any other legislation anywhere. In addition to requiring the written permission of the pupil, if the pupil is an adult, or of the parent or guardian if the pupil is not an adult, for disclosures generally, the pupil record is not admissible in any proceeding; that is, it is immune from court process in all cases without the consent of the parent.

This is a much higher degree of security than is provided, to the best of my knowledge, anywhere else in legislation in Ontario. The closest we come is in section 29 of the Mental Health Act, where there is a power on the attending psychiatrist to determine whether the disclosure of information will create harm to the treatment

or recovery of the patient or to a third party, but it is not as blanket as the provision that is found in this section.

In subsection 3 there is an absolute, unqualified right of the pupil, or his parent or guardian where the pupil is not an adult, to examine the record.

Subsections 4 and 5 give a right that is parallel to the provisions contained in Bill 49 for correction, but I draw your attention to the fact that the correction mechanism is predicated upon what is going to be best for the educational needs of the child. It relates back to the purpose of the information, and that is for the improvement of instruction of the pupil. That is the touchstone against which any request for changes would be made.

I have made some inquiries among the boards that I act for personally–the board that I am representing today and a couple of others, whose combined pupil population would be something in the order of 200,000 pupils at this time–and no one can ever remember a time when a parent or a guardian ever sought the right to take a decision on to the ministry appointee provided for in subsection 5.

Not that this is perhaps governing, but I do suggest to you that this mechanism, having been in place, to the best of my knowledge, for about 25 years–although I must confess I did not research the precise date at which this section was introduced; my recollection is that it has been there for at least 25 years–it does suggest that the mechanism that is in place already is working fine and that there is no need to impose upon the system a different kind of mechanism because there is no evil that is being remedied by that process.

In conclusion, on behalf of Metropolitan Separate School Board, for whom I act, we appreciate the opportunity of addressing you and bringing to your attention what we think would be a mistake in the context of the educational system. Apart from that one factor, my client supports entirely the concepts of the bill. I would be pleased to assist you in any further way you would like.

The Chair: Thank you, Mr Kelly. I believe we do have some questions or comments from the committee.

Mr McGuinty: Although I was not here, I have the brief presented yesterday by the Ontario Separate School Trustees' Association, speaking on behalf of 54 separate school boards across the province, so in a sense your presentation is redundant. I do not say that in a disparaging sense, but it seems to be the consensus of all the boards in the province. Your position, as enumerated in much more detail, I might say, than by the association, is the consensus of the separate school boards in the province.

Mr Kelly: I think it is fair, Mr McGuinty.

Mr McGuinty: It is, sure.

Mr Kelly: The thesis is substantially the same.

Mr McGuinty: I certainly am very impressed by your presentation, as a former teacher, as a parent, as a trustee. I think you have very appropriately pinpointed a fact; that the sensitivity that we are required to engender in the context of the school situation is different in kind and degree to what we have in other areas.

As you were speaking, I thought I certainly would not want to have my files revealed, showing how many separate schools I was shifted to and from, at the principals' requests, on one occasion for my persistent failure to take the free dose of cod liver oil which at that time constituted Ottawa separate school board's health program.

I appreciate your very thoughtful statement. You have done a much more convincing job as a board than the association. We appreciate your presentation.

Mr Kelly: Thank you.

The Chair: Judging by the end result, Mr McGuinty, I think the three spoons of cod liver oil did very well.

Mr McGuinty: I refused to take it.

The Chair: Oh, you refused to take it. That is the answer, I guess. Are there any other comments?

Mr Sterling: The position of my party, the Conservative Party, on specific statutes dealing with privacy matters has always been that they should override the freedom-of-information act. We held that view when dealing with the provincial freedom-of-information as well as the one dealing with municipalities and school boards, because we feel, as you do, that careful consideration of the specific instance can only lead to better consideration of private information than a general act which is trying to cover a whole bunch of different kinds of situations. Therefore, when the provincial freedom-of-information act was brought forward, we wanted all of the confidentiality provisions of the various 110 statutes across the province exempted unless brought in.

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The government reversed that and said they were all in unless exempted out. We were going to go through a piece of legislation in the next few weeks, which actually was introduced today by Mr Elston, to exempt I think about–well, I have not seen the bill, but presumably there will be a few exempted out.

We agree with you that if you have a statute which has dealt with the specific circumstances and there are differences, why not deal with privacy in that context rather than having a general overall bill? Perhaps the argument makes even more sense when dealing with municipalities than it does when you are dealing with the provinces, so we will look very seriously at bringing forward amendments to support your position.

The Chair: Any further comments or questions?

Hon Mr Elston: The Ontario student records form or folder, I guess, if that is what it is, can sometimes not contain–in fact, will sometimes fail to contain–things like psychologists' reports and other things like that which are a part of the personal record, as I understand it. Although it probably should be in the folder, I know from some information that I have received on occasion that it is not always included.

The failing then of section 237 might be that that record would not be made available to the student or the parents at a time when it could have a substantial effect on how that student is dealt with upon transfer or otherwise. It seems to me that perhaps there is some merit in having the parallel nature of the freedom-of-information act available so that someone does not inadvertently not disclose everything that is in hand. Have you ever run across that experience, where a psychologist's report is not available or part of that record?

Mr Kelly: Clearly, there are at times in various boards other kinds of files that are generated by various kinds of specialists. We tried to address that point only briefly in the brief.

I cannot speak for every teacher and I cannot speak for every principal. I can only tell you what I think the legislation was designed to do and what I, as a solicitor acting for a board, urge whenever I get the opportunity, and that is that the content of the OSR should be examined by the principal, I take the view no less than twice a year on every OSR, to make sure that whatever the OSR contains is according to its purpose, because its only justification for existing is if it is going to address the improvement of the instruction of a child. I think most supervisory officers–and perhaps in a moment I will ask Mr Léger to comment as well, but the only reason for having anything in the OSR is that it will advance or improve the instruction of a child. Once a psychological report, for example, has served its purpose, and it may be because it has a dated life, it may be because the situation has changed, it may be for any number of reasons, but in any event, that report should be removed from the OSR. But the practice of most boards in any event is that before a copy of that goes into the OSR, a copy is both handed to the parent and discussed with the parent.

That is not true with some of the backup material. From a professional standpoint, the psychologist would expose himself or herself to charges of professional neglect or professional incompetence for having disclosed certain sensitive test material without an explanation.

As I am sure you are aware, the code of ethics imposed by the Ontario Board of Examiners in Psychology requires that psychologists make sure that the possession of information which itself can have some health implications is appropriately dealt with and appropriately explained so that there will not be a misunderstanding on the part of the person who receives that information. That is translated in practice, in my understanding, to an unwillingness or a refusal on the part of a psychologist to simply hand over his whole file. With great respect, I suggest that is appropriate.

That is similarly the case with the psychiatric files that would be generated by a psychiatrist, who equally could expose himself or herself to professional misconduct charges for inappropriately permitting a parent or a child to have access to that psychiatric file.

I am sure that within your ministry you are addressing the issue of health records generally. Both of those, in my judgement, fall into a similar category to the health record concept. But you are quite right, there is some material that is found outside the OSR. Generally speaking though, if it is going to be used for the instructional program of the child, at least a summary of that will be found in the OSR, to which the parent of course has access.

Maybe Mr Léger can assist you in some further way.

Mr Léger: I guess I can only speak from experience, and that is that whenever psychological testing or special education testing has gone on in our board, that information is shared with the parent first before it is even shared with any other professionals. The primary responsi-

bility on the teacher or the psychologist is to share it with the parents. It is shared in a written form and then a written summary is placed in the OSR if it will have some material benefit in the instruction of the pupil. That is our board practice and the operating fundamentals that we work on.

As Mr Kelly indicated, the psychological professionals will retain possession of the raw test data, the raw test scores and so on and will only share those with other psychological professionals. Even I as a superintendent would not be privileged to that information, but I would be privileged to the information on a summary basis; in other words, what their psychological findings are from an educational perspective.

Hon Mr Elston: Would the teacher also receive information on that?

Mr Léger: Yes. Again, through the OSR and through the process of the IPRC, if indeed the child is brought through the IPRC process.

Hon Mr Elston: Would reports of the OSR actually deal as well with issues of discipline related to certain reports, psychological assessments and otherwise? Is that deemed to be part of the record for the purpose of instruction or not?

Mr Kelly: The policy of Metropolitan Separate School Board and, in my experience, the other boards for whom I have offered any consultation has been that the notice required under section 22 of the Education Act be given to the pupil. A copy of that goes into the the OSR, but in any event a copy is physically handed to the pupil, and very often is physically handed to the parents, so that there can be no misunderstanding. The notice of suspension is a document to which they are privy in any event. We go one step further and review the OSR and make sure that keeping a notice of suspension in there continues to be for the improvement of instruction to the child.

Hon Mr Elston: No, I understand the notices of suspension and things like that. I am talking about the use of a psychological report, for instance, for the purposes of understanding the effect of discipline or how you manage the child in the classroom as opposed to the actual notice of suspension.

For instance, a difficult-to-manage child might very well be assessed for psychological or psychiatric reasons. Would that be seen to be for the purposes of instruction or what? I sometimes get complaints about the basis upon which people are viewing children. Not often–it is not a big volume issue with me–but from time to time there are contentious issues that arise between a school board and the parent or a principal and a parent of a child who seems to be "picked on." They have these papers. I guess I would like to know, in those circumstances how would I as a parent go about finding out what these papers are?

Mr Kelly: I cannot speak for other boards, but in the boards with whom I have had some experience those kinds of "papers" would be found in the OSR, again with this limitation and with strong encouragement from supervisory officers to make sure that it continues to benefit the child. Obviously one cannot ensure that it is going to work perfectly every time, but I think generally it probably does.

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Mr Léger: In three and a half years as a field superintendent, I only had to intervene once where a parent asked to see the OSR. In essence, it was just to find out the contents and they wanted me present. We photocopied off the entire contents of the OSR, which had already been sent to the parents in piecemeal form. I do not think they even asked, after the photocopying and after perusal, to have anything removed from the OSR. That was during three and a half years with approximately 8,000 pupils in that jurisdiction.

Hon Mr Elston: Just one last point, again with the OSRs: With respect to notification of collection of information, it would seem to me that, maybe at a time when someone was being enrolled either for junior kindergarten or senior kindergarten, perhaps a notice would be sufficient and that there would be sort of a continuing notice that information was to be collected for the purposes of a record. I think that was a point you had wanted to deal with as well.

Mr Kelly: We do not have any problem in letting parents know that the collection process is going on, but compliance with part II goes to far more than just giving a notice at the entry point. It is the sheer volume of information, which is ongoing on a continuous basis, that potentially will create a problem and expose, in our case, 7,500 people, being our teachers and probably another 1,000 or 2,000 who are support staff dealing with kids, to making mistakes under the act because they do not know the act well enough.

I mean no disrespect, but it is tough enough for those of us in my profession to understand exactly how this act is supposed to operate. Teachers, like many professionals, prefer to keep lawyers out of it, and I think they are right. But

the fact of the matter is that if this is applied to pupil records, I foresee great difficulties in being able to comply with the act.

I think our point is that it really is not necessary, given what is already in place and what is the actual experience. If there are, as I think there are, something in the order of one million children who are enrolled in schools at the moment in this province, the level of complaints against inappropriate use of information or improper disclosure has to be minuscule compared to the volume of information that is generated and used day after day.

That may not be the case with other organizations which are dealing in a different way. There is a great deal of interchange between home and school, which is, in my experience, the philosophy of all the schools. They want to have that exchange between parent and school for the betterment of the education of the child. I think our concern is that to impose upon the school system something that really does not remedy anything does not do anybody any good.

The Chair: Thank you very much, Mr Kelly. We appreciate your advice and it will be very helpful to the committee in our further deliberations.

ORGANIZATION

The Chair: We have two items of committee business to deal with. There is the report on the business subcommittee and a draft letter which we have to deal with.

I believe the clerk has circulated the subcommittee report. Are there any questions? If there are no questions–

Mr Sterling: Some of us were listening to the people presenting their briefs.

The Chair: You were not here when we prepared the report in any case.

Mr Polsinelli: I have read the report and I have no objection, Mr Chairman.

Mr Sterling: I have a problem. Without Mr Kormos here, it is a little difficult. Did he indicate anything to the clerk before he left?

The Chair: I believe he indicated to the clerk that he is happy with the subcommittee report. He also indicated that we could proceed this afternoon in his absence.

Mr Sterling: That is fine by me.

The Chair: Can we have a motion to adopt the subcommittee report? Moved by Mr Kanter.

Motion agreed to.

The Chair: In yesterday's deliberations there was the decision on the part of the committee that the committee send a letter to the Solicitor General (Mr Offer) informing him of the concerns and the particulars of the brief of the Annex Women's Action Committee. The clerk has graciously prepared a draft letter for the signature of the chairman, which has been circulated for consideration. Are there any comments on the draft letter?

Mr Kanter: It is fine. I just suggest we send a copy to the representative of the Annex Women's Action Committee, I believe Ellen Anderson is the president.

The Chair: So do I take it that the committee has agreed with the draft form of the letter? All in favour?

Agreed to.

Mr McGuinty: The letter is clear, but there is one misplaced modifier and a dangling participle.

The Chair: Are you looking for a consulting contract to the clerk of the committee, Mr McGuinty?

Mr McGuinty: No, I pass.

Mr Polsinelli: I want Mr McGuinty to identify them.

The Chair: Yes, Mr Polsinelli wants you to identify them.

The question has come up several times as to whether or not the committee would want the Information and Privacy Commissioner to attend and respond to any questions or make any comment with respect to the bills. Can the members of the committee give us any direction on that? Do you have any comments? Do you think it would be fruitful to have the commissioner appear, perhaps for a half-hour or an hour at the next session?

Mr Sterling: I think it would be a good idea. He is the person who has been dealing with the provincial act. If there are some obvious problems that are looming on the horizon, we should hear about them now, and if we can head them off, why not?

The Chair: The committee will be meeting on 4 and 5 December. Presumably on 4 December, next Monday I believe, we can invite the commissioner to attend and make any comments of whatever length that he wants to make and then he can make himself available for questions.

Mr Sterling: I am sure he would have some. I would like to indicate that I would be interested in hearing from the commissioner. I know that Mr Eichmanis is here from his office. I would like to hear from him how he envisages this being

implemented, particularly outside of the greater Toronto area. If in fact somebody wants to go to to the commissioner in Ottawa, how is he going to do that in a practical way?

Hon Mr Elston: I might say, just in response, that implementation actually does not fall to the commissioner. It does fall in the mandate that I have been given at the moment. If you want to talk about some of the things that we are doing already, I think I am probably the person to be speaking to about implementation of the provisions rather than the commissioner. If you are talking about appeal provisions and the manner in which he is supposed to handle those, that is a different matter, but implementation of the act is the responsibility of this office.

Mr Sterling: I have every confidence in Frank White and Steve McCann in doing everything they can, but I was more concerned about the appeal mechanism and the protection of privacy, etc, in the far reaches of our province.

Hon Mr Elston: I would not want the commissioner thinking that he was going to be charged with implementation of the act along with all the other onerous responsibilities. That is all.

The Chair: I would ask the clerk then to extend an invitation to the commissioner to attend on Monday 4 December at 3:30 pm.

Mr Kanter: We have a letter from the Ontario Association of Chiefs of Police. I would like to speak to it briefly, if I can do that now.

The Chair: Certainly.

Mr Kanter: There seems to be a sort of legal interpretation that the act may cause them some problems, perhaps in addition to those they raised at their appearance before us. The second last paragraph on page 3 says the act "may restrict the ability of police forces to routinely release the personal information about charged persons or victims." At the top of page 4 it says, "It appears that we should not be disclosing personal information collected for law enforcement purposes to the media unless certain conditions apply....

"If the above interpretation is correct, the media is quite likely going to cry 'foul' when the act is implemented." I would add that other groups, like the Annex Women's Action Committee, would be quite upset. It is a legal interpretation. It is quite complicated. I do not know if they are correct or not. Could I ask the minister if he or staff might provide a brief response in writing to the concerns raised by the Ontario Association of Chiefs of Police for our next meeting? It might be that there is no problem. If there is a problem, we may want to consider appropriate amendments.

Hon Mr Elston: I will look after that

Miss Nicholas: This may be a bit premature, but I am just looking over our agenda and it appears to me at this time that we do not have anything on our agenda unless the Legislature sends something our way for the sittings during January, February and March?

The Chair: Some time in December, when we are considering alternative dispute resolution, we will make a determination to what extent we might involve ourselves in January and/or February in that particular issue, including the possibility of maybe some travel or the extent that we will invite people to come before us. There is some real prospect that we will be dealing with that particular issue in January and February, but that will be dealt with before we break for Christmas. In the meantime, we may have matters referred to us.

Miss Nicholas: Is there any anticipation, any expectation, given the bills that may be forthcoming for second reading, that we will have something other than the alternative dispute resolution?

The Chair: I do not think we have any anticipation at this point.

Miss Nicholas: Okay, anticipation but no knowledge.

The Chair: That is right. If there is no further business, we will adjourn the meeting until 4 December at 3:30 pm.

The committee adjourned at 1651.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Vice-Chair: Polsinelli, Claudio (Yorkview L)
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Kanter, Ron (St. Andrew-St. Patrick L)
Kormos, Peter (Welland-Thorold NDP)
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Nicholas, Cindy (Scarborough Centre L)
Runciman, Robert W. (Leeds-Grenville PC)
Smith, David W. (Lambton L)
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Substitution:
Miller, Gordon I. (Norfolk L) for Mr D. W. Smith

Clerk: Arnott, Douglas

Staff:
Wilson, Jennifer, Research Officer, Legislative Research Service

Witnesses:

From the City of Toronto:
Perlin, Dennis Y., City Solicitor

From the Management Board of Cabinet:
Elston, Hon Murray J., Chairman of the Management Board of Cabinet and Minister of Financial Institutions (Bruce L)

From the Metropolitan Separate School Board:
Kelly, Hugh, Legal Counsel; with Day, Wilson, Campbell
Léger, Guy J., Superintendent of Information Services

Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Municipal Freedom of Information and Protection of Privacy Act, 1989

Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée

Municipal Freedom of Information Statute Law Amendment Act, 1989

Second Session, 34th Parliament
Monday 4 December 1989
Tuesday 5 December 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 4 December 1989

The committee met at 1538 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989
(continued)

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION MUNICIPALE ET LA PROTECTION DE LA VIE PRIVÉE
(suite)

MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989
(continued)

Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Chair: I would like to convene this meeting of the standing committee on administration of justice. Normally, we do not commence proceedings unless we have a representative of each party in attendance. However, Mr Kormos has indicated by written notice that we may proceed in his absence.

Have all the members received the material that was circulated by the clerk in the House? We will proceed.

We have submissions from the first group, Southam Business Information and Communications Group Inc, scheduled for half an hour. I would ask you to come forward and identify yourself. Normally we have 30 minutes allotted and the questions have to come from within that 30 minutes. If you want questions and some dialogue with members of the committee, we would ask you to leave a bit of time at the end.

SOUTHAM BUSINESS INFORMATION AND COMMUNICATIONS GROUP INC

Mr McAuliffe: My name is Terry McAuliffe. I represent Southam Business Information and Communications Group Inc, which is a division of Southam Inc, a large Canadian publishing company. I am here to speak to you today concerning a submission that you have been kind enough to receive concerning legislation governing the right to privacy and freedom of information for municipalities in Ontario.

I come to speak to you on behalf of the company because I believe we will be adversely affected by the legislation the way it is drafted and also because I believe the general public will be adversely affected in exactly the same way. I would like you to give consideration to our point of view in your deliberations.

My title with the company is director of construction information services. My company, through its publications and information services, has been in the business of gathering and providing information to the construction industry across Canada for over 100 years. The company has not been around that long but we have acquired other smaller companies whose history goes back that far.

The construction industry has many things about it that are unique and that single it out from other industries in the economy, and one is its particular need for information. Most manufacturers and retailers can display their products on the street in windows. They can advertise them, knowing that people will make buying decisions in the very near future and will be influenced by what they see. The contractors work for someone maybe once every 20 years and their product is very difficult to put on a shelf for anyone to see or examine.

So it has been found necessary throughout the free world for information services such as ours to be invented. In fact, they have been around, as I said, for more than 100 years. We gather information from a wide variety of sources. We have full-time research staff who gather information from architects, consulting engineers, owners, developers, contractors, manufacturers, suppliers and every information source that we can think of.

A very important information source among those that we access is building permit records maintained by municipalities across the country. We have been obtaining this information for longer than anyone who is now with us can recall. I cannot honestly tell you that we have been gathering building permit information for

more than 100 years, but I know that it goes back a very long time indeed.

We have made it a point in the gathering of this information to do so with as little impact on a municipal administration as possible, and our success rate has been remarkable. Over the years there have been very few municipalities anywhere in the country that have denied us access to their building permit records for any period of time. There are one or two exceptions, as there are to any rule, but by and large municipalities grant us free and open access to this information.

One of the reasons for this is that we undertake to do all the work and underwrite the cost of gathering the information ourselves. We only ask that municipalities allow us, during their normal working hours, whatever they happen to be, to enter the office and gain access to the ledgers or files that contain building permit information and transcribe the information therein. We do so, in most cases, on a weekly basis and we do so at times and under conditions that we have agreed to in advance with municipal officials. There is never any payment involved and there is no work incurred by municipalities to make this information available to us.

We are not the only people who gather this information from municipalities; there are others. There are other local information services here and there across the country. There are a number of business people and individuals who also, regularly or occasionally, visit municipal offices and ask for access to building permit records. By and large, they are granted that access and it does no one any harm.

The concern we have with the legislation that you are examining is that, while trying to look at the rights of both parties in any request to access information, the particular right to this information which has always been available will become unclear and the result will be lengthy delays as appeals are filed and bureaucratic processes are followed. This information is by its nature a perishable commodity. It is useful to the people who use it when it is fresh and it is less useful with every passing day. If we had to wait 90 days for the release of every building permit that we access, we would no longer have useful access to this kind of information, nor would anyone else, because a considerable number of construction projects can be completed within a 90-day period.

We are speaking here in our own interest. I make no bones about that. I think it is our right to do so. We are corporate citizens of Ontario. But I speak also as a resident of Ontario myself. I believe the public has the same interest I have in access to this kind of information.

Information similar to this–information about who owns land, to whom it has been sold, the amount of the purchase price–has been so much a matter of public record that a process was set up during pioneer days in Ontario to guarantee access to that information. Land was surveyed here long before it was settled, and some of the oldest buildings in Ontario are registry offices, fireproof buildings created at that time to guard these records and make sure the public had access to them. If you ask most citizens if they have a right to know who owns a given parcel of land, they will tell you that is their right. The same is true when it comes to information about what people do with the land they own. It is nice to be able to say that whatever I do on my land is no one else's business, but we all know that is not the case.

We have all read recently in newspapers about people owning one-storey bungalows who find themselves suddenly overshadowed by four-storey so-called megahouses. If you ask them, I do not believe they would tell you that the neighbour had a right to privacy in his intention to build such a structure.

As a citizen of Scarborough involved in community associations years ago, I heard from time to time of requests to build group homes within neighbourhoods. If you asked most citizens what their rights were, they would maintain they had a right to know what was happening, not on the land they own, but on the land neighbouring theirs, that when something happened such as construction or a change of use which would affect the peaceful possession of their land, they would have a right of free access to that information so they could make appropriate representations and protect their own interests. This legislation will so delay the flow of that kind of information that it will practically withhold it from citizens.

Our legal counsel, Blake, Cassels and Graydon, have drafted a suggestion, which we ask you to consider, that would protect the right of all to access to this kind of information. Thank you very much for hearing me. I would be glad to answer any questions you have.

Mr Sterling: Is it your view that subsection 50(2) does not protect the present information which you are receiving from municipalities?

Ms Vabalis: If I can introduce myself, I am Andre Vabalis of Blake, Cassels and I do not think my client can refer that quickly to a section in the act. You wanted subsection 50(2)?

Mr Sterling: I will read that subsection. It says, "This act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this act comes into force."

Ms Vabalis: I think that is a very helpful section and we certainly looked at that when we were reviewing the act. If it was only relating to information available by statute, custom or practice, we would be fine because our custom or practice has been well established. The part that is problematic is "personal information." The key information that Southam is looking for with relation to these building starts is the name, address, telephone number, postal code and the dollar value of the project. The first four things clearly fall into personal information as it is defined in the act, so that you are taking out the bulk of what we need. Whether or not the dollar value of a project can be considered to be financial activities of an individual, and thereby presume to be excluded, is an open question. I think you could interpret financial activities to be bank accounts and investments but not the dollar value of a building project. On the other hand, I suppose an argument could made to that effect.

So our concern is that information that would fall under the category of personal information would be excluded. That is the most important part. If you were to delete "that is not personal information" from that section, we would not have to be here.

1550

Mr Sterling: Can I ask the minister what his position is on the interpretation of subsection 50(2)? Does our act have that part in it, without the first one?

Hon Mr Elston: The provincial act has the same section. The way your question was addressed to the witnesses, basically, if they were doing it before, then they would not be excluded from doing it thereafter. I think it has also been confirmed, from what I understand from speaking with Mr White, that the commissioner has already made a decision with respect to our act which would lead to the personal information would be excluded from release. Maybe just a hint towards that line would be the use of section 27, under part II, which talks about the collection of personal information. It really delineates something of a hint towards the result of this act continuing in compliance with what has been decided under the provincial statute. That evidence is not clearly available unless you know about the commissioner's other determinations, and I appreciate that, but that is what I suspect will happen here.

Ms Vabalis: If I understand you correctly, you are saying that the reference in subsection 50(2) would not be interpreted narrowly. If you are looking for names and addresses and got those in the past, you would not be precluded from getting those in the future. That is very helpful to know.

I am also interested in you interpretation of section 27, which speaks about applying "to personal information that is maintained for the purpose of creating a record that is available to the general public." We would clearly like to fall under that category, but I see a technical problem in the sense that we are not a land registry office. We are not maintaining that kind of record that is available to the public. We do in fact maintain a record which is available to the paying public, but not as a public service.

Hon Mr Elston: The information available under the Registry Act is also available to the paying public. When you go to the registry office, you pay there just the same as you would any place else.

Ms Vabalis: You could get a ledger for free, though, and look at it?

Hon Mr Elston: No.

Ms Vabalis: I am not a commercial real estate lawyer, but I thought you could.

Hon Mr Elston: I used to be $1 in the days when I was there. I think it went up to $1.25. I am not sure what it is now. That was a long time ago, but you pay for the records. The only thing I think you can get access to without charge is the assessment roll that sits on the counter to identify a lot. Other than that, you pay there. I think this would confirm that what you are getting now would be available here, but it is not ultimately visible just by reading the act, so I can appreciate your interventions.

Ms Vabalis: I guess the only point that we would suggest is that, following along the lines of the exemption, there is a possibility that a head of an institution can refuse to disclose personal information, except where it is maintained for the purpose of creating a record. I guess the suggestion on page 3 of our submission is that we have a similar exemption, but that it specifically address our situation. If you feel that is covered under the provision of creating a record, I would not want to press it, but our view was that that it might not be sufficient to cover our position. So we would ask that there be an exemption for personal information volunteered or provided by

an individual when seeking some permission, some permit licence application, some discretionary action on the part of the government.

Hon Mr Elston: I am trying to think of what we might be getting into here, but as an example, where someone would apply for a licence or a discretionary decision to be made at a municipal level where he could preclude the public of being notified–I am thinking in terms of a minor variance or a zoning change request–you have to make that stuff public because that is the way the Municipal Act speaks to giving notice to all the land owners in the areas surrounding the subject property. I am just trying to figure out when that would actually happen.

Ms Vabalis: I guess this provision would make clear exactly the situation you are talking about. When you apply for that kind of zoning information, it goes through the municipal council. It comes under the control of the clerk and then the information is available to the public under section 77 or section 78 of the Municipal Act, which provides that anybody can have access to information under the control of the clerk.

In Southam's particular case, we have a problem with the building permit information. Technically that does not come under the control of the clerk; it comes under a chief building official. There is an argument that as a result of that slight discrepancy there is the ability to refuse that information, again because it contains personal information. So it was with that in mind; it was to cover these slight discrepancies. Most of the things you would think of do come under the normal route of going under the control of the clerk.

Hon Mr Elston: In the way the act is drafted that building person ultimately is responsible to the head who makes the decision. It would come to the head, I expect, to make a determination whether that stuff should be released.

Ms Vabalis: It is a peculiar anomaly but he reports directly to the mayor, in effect. It does not go through the council, as it were. Just because of the way the Building Code Act is drafted, the chief building official is more or less a power unto himself and simply does not flow the normal channels.

Hon Mr Elston: We will consider it, but under the circumstances I think what we have tried to do is to make sure that for any organization that is acting within the mandate of council, which that person would be whether he reports to the mayor, reeve or whoever, he is covered for the purposes of freedom of information, but I will check with our officials and see if it is necessary to tighten it up. I suspect we are probably going to be covered, but if we can clarify it I have no problem with it.

Ms Vabalis: It is a small technicality that has caused us trouble in the past and that I think is an anomaly.

Mr McAuliffe: If I may add one comment, I believe all the people in this room, or most of them, are members of the legal profession and are quite experienced at reading and interpreting this kind of legislation and are capable of making objective decisions. But the decisions that are made in most cases concerning access to information are made by administrative people who usually lack legal training and will tend to choose the safe path.

Hon Mr Elston: That may be beneficial in some sense, I am told.

Mr McAuliffe: Yes, but it tends to be an obstacle to the free flow of information because then we get into the lengthy process of appeals and hearings. I would just request that however you word the act, you make it clear to the laymen who administer it where various rights and obligations lie.

Hon Mr Elston: The provincial act has generally speaking been made user-friendly in many ways. I know that because the legal department is staffed by people who have been trained in Bruce county in the law, they will make it more user-friendly even though it is a Municipal Act application.

Mr McAuliffe: That is a great comfort.

Mr McClelland: With respect to your submission, at the bottom of page 2 you raise a concern surrounding section 15. You state correctly in your brief that section 15 is permissive. I am going to presume that your co-operation and the receipt of information on request has been mutually beneficial. You provide a service and the service in turn has a potential commercial benefit to the communities that are providing the information.

I am a little curious quite frankly, and I wonder if you can help me, because I do not see the problem. I understand what you are saying, but inasmuch as it is permissive there is a reciprocal relationship in terms of benefit. Why do you have a concern surrounding section 15?

Mr McAuliffe: We have a concern because of our experience from time to time with municipalities that with little or no notice suddenly tell us we may no longer have access to the information.

We then have to make nonlegal representations to them and in many cases then make legal representations to them.

1600

Mr McClelland: You are saying this is at the present time.

Mr McAuliffe: At the present time.

In the province of Quebec, legislation was passed approximately seven or eight years ago and set up a procedure similar to this. It created a tribunal for appeals. We were one of the first to appeal to this tribunal a decision denying us access to information. We got a favourable decision very quickly, but practically it has proved difficult to enforce. Each municipality still tends to consider its own circumstances and says that as long as there is doubt, it will not provide the information.

We have misgivings that this will lead to great complications in obtaining information in the future, complications that are not there now and have not been for more than 100 years.

Mr McClelland: I am having difficulty with that, quite candidly. If I have heard you correctly, you say that by and large you have access at the present time. From time to time you run into difficulty obtaining information, in which case you go through a representative process and have on occasion moved into a legal process to obtain information.

Maybe this is just one of those days but I am having difficulty understanding your concern with respect to this legislation. How would it complicate that further, if you are having that difficulty at the present time? The flip side of it might be that you are at least establishing a network whereby when you run into a process where when you have that problem–you are telling me you encounter it from time to time anyway–you have a prescribed format with which to deal with it. I do not see the difficulty, inasmuch as it seems you have that difficulty in any event.

Mr Sterling: Maybe I can answer it. I find that it is much harder to get information now from the provincial government than it was before the Freedom of Information and Protection of Privacy Act was passed. There are all kinds of reasons a bureaucrat can give for stalling you, for never answering you, for putting you on hold for ever.

One is fees. One is that they can without consultation not answer you for 30 days. Without consultation, they can extend that time period for some period of time. I have talked to numerous reporters in this building who have told me it is much harder now to get information than it was before the freedom-of-information act was passed. That is their concern.

Mr McClelland: I understand what you are saying.

Mr Sterling: They are not only dealing with one government–

The Chair: I think the question or the comment was directed to the witness. I appreciate that you have comments and we are not trying to preclude your comments, but if Mr McAuliffe wants to give up his time and defer to you, I am sure he will. Mr McAuliffe, the floor is yours.

Ms Vabalis: Mr McAuliffe finally let me step in. Perhaps I could answer both that and an earlier question you had. I think that what Mr Sterling was referring to is true. Once you have legislation, all of a sudden everybody who was doing something stops and checks the act to see: "Are we really in compliance or not? Could somebody, an irate ratepayer, come and create a problem for us? We do not want to be seen to be infringing the act," and so on. I think there is a natural tendency to be more cautious.

That is certainly what happened in Quebec in our experience. We were put through the process of going to court to have a clear determination made. From that point of view, if we could work on the suggestion made earlier that the creation of a public record covers the kind of thing that we are doing, I would be very pleased. I do not think you have to go to court if the act is clear enough to provide you a clear statement of your rights, "We have a right to this access because we provide a published record that is available to the public."

With a subtle word change on that section, I think we would be covered sufficiently that we probably would not have to be put through a court process in order to take advantage of the principles of this act.

Your earlier question in connection with section 15 and the mutual good relations between Southam and the municipalities is a different concern that we have not specifically addressed in drafting. It speaks to the problem that some municipalities have, although as Me McAuliffe pointed out, Southam makes every effort not to put them to any cost or administrative burden, or Xeroxing or anything at all, except to open their building permit applications record, let us take down the information and then leave. Some communities are computerizing that and they do not want extra people coming through the municipal offices.

What they are saying is, "Every three months we will publish the whole thing on a computer printout and you can have it for $1 a page." Because we are going to be making that information available within a 90-day period, technically they are permitted to refuse access to us to look at that. Ninety days is suicidal in the business. A lot of this information is on a daily basis. A lot of it is on a weekly basis. Some of it is on a monthly basis. Very little is quarterly, semiannually and annually.

Although it is a discretionary provision and although we make a minimum of fuss when we come in to get the information, it is available to the municipalities. Our clear view would be to eliminate that section altogether or to give it a greater override in subsection 50(2), as Mr Sterling was suggesting. If they have adopted that practice in the past, it would continue to be adopted and be grandfathered.

I would be delighted to get rid of that section because it poses a potential problem over which we have no control.

The Chair: Mr Sterling, did you want to take another run at it?

Mr Sterling: No, I think the witness agrees with me.

The Chair: Are there any further comments or questions? Thank you very much for your presentation. I am sure the insights you have given the committee will be helpful to the members when we start doing our clause-by-clause analysis..

Mr McAuliffe: Thank you very much for hearing us.

The Chair: The next presenter is Sidney B. Linden from the information and privacy commission.

Mr Linden: Thank you very much.

Mr Eichmanis: I am John Eichmanis, senior policy adviser.

Mr Linden: Legal services is here as well. Tom Wright, but he prefers to sit back there and only come forward if needed.

The Chair: Proceed.

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

Mr Linden: Thank you very much for this opportunity to speak to the committee. The office of the Information and Privacy Commissioner certainly welcomes the municipal expansion of the concept of freedom of information and protection of privacy. Ontario is one of the few jurisdictions in Canada that has extended freedom of information and protection of privacy to local government agencies. Quebec is about the only other jurisdiction in Canada that has a similar scheme.

There are many American cities that are covered by open government or sunshine laws that come under the general jurisdiction of state schemes. The one in New York is one that comes to mind, and the one in Connecticut. In Ontario, starting in January 1991 all government agencies with very few exceptions will now play the game by essentially the same rules governing access and protection of privacy.

In my respectful view, I think this is a natural extension of the general principles that are embodied in the Freedom of Information and Protection of Privacy Act, 1987 because clearly, anybody who lives in Ontario also lives in a city, a town, a village and is affected by decisions that are made by their local government. I have every expectation that the municipal act will succeed. At the provincial level, in the first two years of operation I believe the act has been successful.

I do not want to waste a lot of your time, but very quickly, there were more than 5,000 requests for information to the government of Ontario during the first year of the act's operation. We will soon be in a position to have statistics for the second year, but in more than 75 per cent of all cases all or part of the information that was requested was disclosed by the institution.

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During that first year there were approximately 350 appeals to the commissioner's office and more than half of those were completed during the first year. Approximately half of all the appeals that are completed are resolved through the mediation process. The remaining half are disposed of by way of an inquiry and we have every reason to presume that this successful experience will be repeated at the municipal level.

Management Board and the ministry coordinators have worked very hard to establish an infrastructure to deal with provincial requests. Our Management Board and the Information and Privacy Commissioner's office are now working with local government bodies to train local officials who will be working with this new scheme. Although the municipal legislation shares the same principles as the provincial act, the special circumstances of municipalities have been taken into consideration in drafting this new legislation.

I think it is fair to say that the Office of the Information and Privacy Commission has now developed as an organization and as an appeal agency. We have been able to streamline our organization and our appeal process vis-à-vis the provincial government and I believe that we are now in a good position to handle appeals from local government agencies. The Information and Privacy Commissioner's Office is sensitive to the fact that local government agencies are different from provincial ministries and agencies of the provincial government.

We are presently in the process in our own office of studying the impact of the municipal expansion on our operation. It is not possible to predict accurately, but it is reasonable to assume that appeals will be significant, and will be as significant as they have been at the provincial level. It is important that our agency grow to meet this expanded jurisdiction, that we have the necessary resources to allow us to meet this expanded demand.

I think it is fair to say that municipal freedom of information and protection of privacy will be a boon to local government agencies. I think the legislation will standardize access and privacy rules across the board. Many local governments are probably already in compliance with the basic requirements of the act but the act will serve to help them to examine their information gathering and their record-keeping practices. I think standardization will become commonplace for sensitive personal information that either should not be collected or should be collected and stored very carefully.

The act will provide an opportunity to examine practices and forms and will encourage the development of efficient administration through better record-keeping practices. In many ways, the act will strengthen the closeness that has traditionally existed between local government agencies and the public.

I want to point out very briefly that in the first two years of operation the Information and Privacy Commissioner has released approximately 125 orders. These orders provide a body of case law that interprets, to a large extent, the various provisions of the act. In at least two cases the Municipal Act takes a position different than we did in at least two of the orders.

In one of the orders involving a municipal boundary dispute, we ordered that some information that did not meet the section 17 test be released and that information has now been expressly exempted. If the language that has been added to the Municipal Act were in the provincial act, that would have made the resolution of that case a lot easier. As it turned out, in that case we did not have that language and we decided the case the other way than the way in which the act is now written.

The other case we have decided, which is being reversed by the provisions of Bill 52, is the question of fees. In one of our early orders we decided that the language as it was written in the provincial act provided for a discretion to charge fees, that the agency could or could not charge fees depending on whether it chose to, and Bill 52 makes it clear that it is now a mandatory provision that fees must be charged by the institution.

In conclusion, I just want to point out that I think this is an unusual experience for provincial government in that there has been sufficient lead time. We usually do not have the luxury of sufficient lead time to allow local government agencies to prepare themselves for municipal freedom of information and protection of privacy, and time for our office, time for the Information and Privacy Commissioner to reorganize and to make adjustments to the way it operates.

I keep thinking of how it was when we first started in January 1988 when I was officially appointed in November and we had to be operational by 1 January. We were looking for office space and staff and systems and we were doing everything at the same time. Now we have had enough time to be prepared and so have the municipalities.

We need the continued support of the Management Board of Cabinet and of the Legislature and we need sufficient resources to meet this new challenge, and I can assure you that we are eagerly looking forward to it, anticipating it.

Thank you very much for this opportunity.

The Chair: Thank you very much for your comments, Mr Linden. I will ask the members of the committee if they have any questions or comments.

Mr Sterling: Mr Linden, you did not indicate in your remarks at all whether you would suggest any changes in this act as it now is drafted that would ease the situation in terms of implementing it, making it simpler in some ways. It is not going to have, I think, the same degree of sophistication involved, particularly in small municipalities with people who will not be perhaps as versed in a provincial situation. Have you got any suggestions at all in that regard?

The Chair: Just by way of information, I might indicate that I believe the minister has

circulated with the committee a number of proposed amendments and I am not sure that Mr Linden is aware of them.

Mr Linden: No, I have not seen any of them.

Mr Eichmanis: If I can add a word here, are you talking about the commissioner's office implementing our role in the municipal legislation or are you talking about the act?

Mr Sterling: I am talking about anything that can help the situation out there.

Hon Mr Elston: It is an anomalous comment.

Mr Sterling: It is an anomalous comment, yes.

Basically, you know, notwithstanding that this is a political forum, I am still not that interested in having a bill that is confusing in some ways. There are 800 municipalities out there and I do not know how many school boards, but a significant number of those as well, and other agencies, so there are going to be more people reading this legislation than perhaps read the original Freedom of Information and Protection of Privacy Act. I just wonder if there is anything within it which could make it simpler. Maybe it will be with more luck than justice, but it will be easier to interpret and to administer.

Mr Linden: We have been in contact with Management Board throughout the process. We are heavily engaged right now in an outreach program. It is not as if we were waiting for January 1991 to come around. We have been out and around to a number of municipalities already as part of Management Board's general program of educating the municipalities and preparing them, and I assume that we will be continuing that.

I have to say that each time I go out myself to talk to a municipality I learn something new, and I think that is going to continue to happen. We are nervous. There is no doubt about that. We are nervous. Over 2,000 or 2,500 local government bodies are going to be covered. If each one has one appeal per year, that could be very substantial. When we started to talk about this act, I was hopeful that we might find some sort of intermediate level of appeal.

I am nervous about the fact that any individual throughout the province can appeal a decision of any local government agency directly to our agency. I think that the potential for an excessive number of appeals is there. It is virtually anybody's guess; nobody really knows how it is going to impact and exactly what is going to happen. I think we need some time to find out how the actual experience works out.

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Mr Sterling: Do you anticipate having offices in a number of centres across Ontario?

Mr Linden: Not at the moment. Experience would dictate. I prefer to grow from the bottom up. We have been talking about that a great deal in our office, whether or not we should have a separate municipal division in our office or whether we should just allow the municipal appeals to fold right in, how we should be organized and structured. We have not reached any conclusions yet, but we are in the process.

My instinct is that we should not rush to establish offices around the province until a need is established. There are other options that could be more efficient and more effective that we have to consider. We have not yet considered all those other options. It may be possible at some stage that we would have to have offices in the higher-volume areas. We have not made those kinds of decisions yet.

Mr Sterling: I hope you at least get a 1-800 number for your offices, because I am sure that many people from across the province will want to get some advice.

Mr Linden: We have that now, Mr Sterling. We have a 1-800 number and we do get a number of appeals from around the province now. I think that there is a lot of cost analysis and benefit analysis that we will have to engage in when we have an appeal from a place like Sudbury or Sault Ste Marie. The information is up there.

Should we send one of our appeals officers up there to do the investigation? Will we have to conduct the inquiry up there, or should we bring the people down here to Toronto? Can we use closed-circuit television? Can we use the formula that we have essentially established now, which is a written submission? If we can continue to dispose of most of the inquiries by way of written submission, it may be that we can handle it from Toronto. There are still a lot of questions that we do not have answers to yet, and we need some experience.

The Chair: Are there further comments and questions? If not, then thank you, Mr Linden and Mr Eichmanis, for your attendance and comments here today.

We have a presentation from the Paralegal Society of Canada next. I understand that they are not available until 5 pm, so we can adjourn until then. There is a bit of committee business that we can conduct before we adjourn, if it is all right with the committee.

Hon Mr Elston: Does the committee require all of the people to come back to set up a quorum again if you adjourn and reconvene?

The Chair: Yes. The presenters at five o'clock were otherwise occupied in other meetings and could not make it beforehand.

ORGANIZATION

The Chair: The item that I did want to review with the committee in terms of committee business had to do with the committee meeting for Monday 11 December. On this particular bill, we have already allowed two days and, if we proceed with these five presenters, that will use up another day. Then we will still have clause-by-clause. The clerk and I are looking for some direction from the members of the committee as to how we want to handle that particular matter of business.

Mr Kanter: This may sound like it is on another matter, but I believe it is related. I know Mr Sterling is here, but unfortunately there is no one from the official opposition. Could I just get some sense of whether it is your understanding, Mr Sterling, that we will be able to complete Bill 49 and the companion legislation tomorrow?

Mr Sterling: I cannot speak for the other party but I do not see a lot of amendments coming from what I have heard so far. I am quite willing to give the minister a rough time if he does not stay in line as he has today.

Mr Kanter: Is that a yes, more or less, on your part?

Mr Sterling: I do not think that there is going to be a problem.

Mr Kanter: Okay, a tentative maybe.

Mr Sterling: Do we have submissions tomorrow on this bill, or is it all clause-by-clause?

The Chair: I think tomorrow is strictly clause-by-clause.

Mr Sterling: On Bill 145, and again I cannot speak for the New Democratic Party nor do I want to, but it is my feeling that we should get on with clause-by-clause after this. Are there any other groups that do want to make presentations?

Clerk of the Committee: I have just distributed a proposed agenda for Monday 11 December indicating a full afternoon of presentations if the committee were to agree to schedule all. As the committee last met last week, the chair indicated that there was one and possibly one other presentation to be scheduled. After that meeting three more requests came in, and I have had another telephone call today from another group that may or may not be interested in requesting to appear.

Mr Kanter: Having heard what Mr Sterling said on this and in view of the fact that we have heard fairly full submissions from those who essentially are proponents of the legislation, I suspect, looking at the names, that some of these groups may be people in opposition and I certainly would be prepared to consider closing deputations on this bill at this point.

Mr Sterling: That is my opinion too, but the problem is that we do not have the third party here. I think that the permission to go on with the meeting had nothing to do with this part of discussing the agenda and we might be open to more criticism and get ourselves into more trouble by making the decision now.

The Chair: We have the one day scheduled for Bill 145, and I wonder whether it is reasonable to suggest that we restrict the presenters to 15 or 20 minutes, let's say, which then probably would leave sufficient time for the rest of that session to deal with clause-by-clause.

Miss Nicholas: That is a good suggestion that you put forward, Mr Chairman. I think it is important that we hear from these people, because they might have a point of view different from the ones who did come before us. However, we have to keep in mind that Bill 49 and Bill 52 are really where our thrust should be now and we should firm up the clause-by-clause consideration.

If we can do that tomorrow, then I am willing as a committee member to see this next Monday, but I think our first consideration should be to get Bill 49 and Bill 52 done. I think your suggestion of shortening these and going right into clause-by-clause is very constructive, because we will be adjourning soon and I would hate to see us taking up too much time on Bill 145.

The Chair: Is someone prepared to make a motion to that effect?

Mr Polsinelli: I would like to speak to the contrary. I am sure that lawyer members of the committee would know the principle of audi alteram partem which, translated loosely into English, means that you should hear the other side, and obviously this seems to be the other side. We have had two days of public hearings with a full half-hour given to each deputant and now, when we have five deputations that appear to be bringing to us the other side, we want to restrict them to 15 minutes each. I suggest we give them the same courtesy that was extended to the first group of presenters and allow the

schedule for next Monday's meetings to remain as it is.

The Chair: Are you talking in terms of the schedule of presenters as is?

Mr Polsinelli: Yes, as is.

Mr Kanter: Could I make the suggestion that we schedule next Monday to be the last day of public deputations on Bill 145, and that if these are the only deputants, they each have a half-hour and if we have more people who wish to speak as deputants, they be squeezed in and we shorten the time for the deputants, if necessary, and we move on to clause-by-clause consideration of Bill 145 on the following day, the Tuesday.

1630

The Chair: That day has certain items already scheduled, which the clerk will talk to.

Mr Kanter: The first opportunity thereafter then. I did not realize that.

Mr Sterling: I am going to have to leave that day around 5:15 or so. Could I suggest that Brass Eagle Inc be spread? The other companies or the other people who are making submissions all appear to be corporations that are involved in the manufacture of these replicas. Would it not be wise to put them all in together? I do want to hear from the Ontario Federation of Anglers and Hunters representatives if they do come, but it is tentative. If it is tentative, I would like them to go on at five and everybody else before. That would be my own preference, but if I cannot be here and you have to put somebody in after, so be it.

The Chair: So you want to reverse the order of four and five?

Mr Sterling: No, what I am saying is that I thought you might be able to squeeze the four, presuming that their message is going to be somewhat similar, into maybe 20 minutes each or something of that nature.

Mr Polsinelli: Perhaps the clerk can get in touch with these deputants and ask them how much time they would need? They may only want 10 or 15 minutes, in which case we would have our problem solved.

The Chair: So the general consensus seems to be to proceed with the normal presentations from these groups–am I reading the committee properly?–and that if the full time is taken up on 11 December, then we will have to reschedule clause-by-clause to some other convenient time.

Mr Kanter: Yes, with the understanding that this be the last day for deputations on this bill.

The Chair: Exactly. So we have made the decision and there is a consensus, unless I hear any objections otherwise, that 11 December will be the last day for presentations on Bill 145, and time permitting, we will deal with clause-by-clause on the 11th. Otherwise, we will schedule clause-by-clause on some other appropriate and convenient date for the committee. If there is no other business for the time being, we will–Mr McGuinty, sorry.

Mr McGuinty: On an incidental matter, I was thrown off stride by–my mental train was derailed by Mr Polsinelli's–was that Latin? The only Latin I know is what I used to learn as an altar boy and I have forgotten it years ago. I have another phrase: tempus fugit non comebackus. But it appeared to me, would it be possible–

The Chair: Sorry, did you say "non comebackus"?

Mr McGuinty: Tempus fugit non comebackus. It is a very old Latin phrase.

Interjections.

The Chair: Mr Sterling, we are going to start the next presentation in a minute.

Mr McGuinty: But on the very fine written briefs that we have it is frustrating and tantalizing to be given them only at the very moment they are going to be delivered. If we had them in advance to give them the attention they deserve and therefore to pose the questions which they merit, I think it would make for more constructive questioning. As you know, in the Ottawa-Carleton caucus, which is the model for regional caucuses in the province, we–

The Chair: I am sure Mr Sterling will concur.

Interjections.

Mr McGuinty: Seriously, maybe Mr Arnott could advise us on this. Is it feasible to ask–in my experience as a trustee over the years, for example, it was quite the order of business to have the written material submitted maybe a week in advance so we could review it at some time prior.

The Chair: Would the clerk care to comment?

Clerk of the Committee: I certainly agree with you that it is an ideal situation to have material in advance. I do try to get out material to members of the committee as much in advance as possible. Very often, material does not come in until the day of the presentation, or even at the committee meeting. In the case of today, for example, material was sent in to you in the House at 1:30 pm.

Mr McGuinty: Please, do not construe my comment as critical. It could be a requirement perhaps.

The Chair: I think we will take your comments under advisement. We will make every effort, Mr McGuinty, to do that on a regular basis. I think it is a good suggestion. If we can get back to the business at hand, Bill 49 and Bill 52, I believe we have our next presenters in the room with us.

I will ask Ms Natalie MacPhee and John Galbreath to come forward. Could you identify yourself and the group that you represent. Be seated. You will be closer to the microphone and we will have a better chance to hear.

PARALEGAL SOCIETY OF CANADA

Ms MacPhee: I am Natalie MacPhee. I am president of the Paralegal Society of Canada, and today I also represent Citizens Against Bad Law. The Paralegal Society of Canada aspires to have Canada and Ontario remain a strong and a just society. At this time of sweeping legal changes, we are concerned that those who follow forthright avenues be permitted an opportunity to afford the general population legislation which will permit all residents the due administration of justice.

With respect to this bill we have a number of suggestions. The first one pertains to clause 14(2)(a). We would like it to read that:

"A head shall not have personal discretion in determining whether disclosure of personal information constitutes an unlawful invasion of personal privacy when releasing information to the individual about himself, to him or to his counsel or agent.

"However, when releasing information about an individual to a third party for use by a third party, other than counsel or agent of the first party, a head shall consider all the relevant circumstances, including:

"(a) whether the disclosure is lawful; whether or not release of the personal information subjects the institution to public scrutiny should not be a consideration."

We are more concerned with the people than we are with the institution.

We respectfully suggest also that clause 14(2)(g) be eliminated since, according to the section, "Personal information that is unlikely to be accurate or reliable" should not be in the file in the first place.

Our third point is clause 14(2)(h), which reads, "the personal information has been supplied by the individual to whom the information relates in confidence." We do not understand precisely what that means. Does it mean that, if I provide you with confidential personal information about myself which we agree is not to be placed in file, then you break that confidence and put the information in the file and then deny me knowledge of the fact that you did indeed break that confidence and inserted that information, or a misinterpretation of it, into the file?

Confidential information should not, in our view, be accepted into a personal file of another. The motives and the integrity of informers providing confidential information should be suspect when the informers are not willing to be held accountable for the accuracy and reliability of the information they provide. This also relates to why clause 14(2)(g) should, in our estimation, be eliminated.

Clause 14(2)(i) deals with "the disclosure may unfairly damage the reputation of any person referred to in the record." All information contained within the personal file of an individual relates to that individual, and that individual must be aware of all details within that file in order to ensure accuracy so that corrections can be made to any errors within the personal file.

One cannot correct an error if one is not permitted knowledge of the error and not permitted knowledge of the entire file content so as to find the error. If a reputation is inadvertently damaged by the release of information, so be it. The psychological and emotional damage to a party refused information from his or her file may be far more severe than that done to the reputation of some third party.

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Our fifth suggestion is that disclosure of personal information be presumed not to constitute a lawful invasion of personal privacy if the individual, his counsel or agent, asks for information from his own personal file when it relates to his educational, criminal, legal, employment or financial situation, or to a medical, psychological, psychiatric history, diagnosis, condition, treatment or evaluation.

We are concerned about a great many of our clients who no longer have access to their lawyer's files. They have had documents sent to them from some company or corporation, given them to the lawyer, and the lawyer will not even let them have a copy of it. We are concerned about clients who say that they have been to a psychiatrist, that the psychiatrist has a complete diagnosis or medical report on them and that they cannot get that file from the psychiatrist or from the hospital. They need a court order; it is very difficult to get a court order. We would like to see people have access to all their files. This issue is seldom addressed in any of the documentation we can find. People have had serious problems

trying to research where or how they can get those files. Information should not be disclosed to a third party without the expressed permission in writing of the first party, but for their own files it should be given.

In number six, we are concerned that clauses 2(a) and 2(d), particularly, provide severe limitations with respect to restricting law enforcement and correctional authority information to the individual. We would very much like to see people have access to their own criminal information. Sometimes people are convicted wrongly. We do not like to admit that it happens, but when it does, people have to have the documentation. If a psychiatrist puts something in your file and you really do not agree with it, why should you not have access to the information so that you can sue that person? All these different things have to be accessible to the public, in our view.

Number seven is quite different. Number seven is not dealt with in this bill; we cannot find it in any of the bills. We may have not looked for the proper bill, so I apologize if you have already gone through something and this is extra. We are concerned that municipal data bases be accessible to the public through the on-line system. Very often people cannot get information for three days, a week, three weeks. There are organizations within our society that are hooked right into the data base and they can get the information at a moment's notice. For investment purposes, for example, that can be very useful to clients. It can be very useful to you as an individual. Some people get the information, others do not. We would like to see everyone treated equally in this, that large and powerful organizations do not get all the information.

We require that the act provide a definitive statement of who can get what data and when from the municipal on-line computer system. We would like to ensure that individual members of the public have the same access as the organizations. One example we can cite is the Canadian Bar Association, which is putting together 11 on-line data bases hooked by a nationwide communications link. Although the public, through general revenue moneys etc, pays for the system, it will not have equitable access to the system. Rapid access to the information relating to changes in zoning can be very important to various members of the public, as well as to the others. That same thing goes for real estate boards.

We recommend that the public should have the same on-line technical access to zoning applications, interpretation of laws, ordinances, etc, as do organizations.

Last, we suggest that all records and decisions kept and made by ad hoc associations or committees must be under the purview of the Freedom of Information and Protection of Privacy Act and ad hoc associations or committees be included in the definitions of section 2(d).

We find now that some small municipalities are now holding meetings, particularly in the area of recreation and so forth. The public is not invited to the meetings. The meetings are closed. The minutes of the meetings are not released. The public does not know how much money is going into recreation budgets. It does not take long for them to spend, say, $1 million on a recreation budget. We would like access to that and we would like the ad hoc associations and committees to be included.

The Chair: Thank you. Are there any comments or questions?

Mr McGuinty: Ms MacPhee, we have had before us today a presentation from Southam Business Information and Communications Group and the Information and Privacy Commissioner, Sidney Linden, I believe a former judge. They spoke from a position of so-called authority in the community. What authority position does the Paralegal Society of Canada speak from? What is the basis of your comments?

Ms MacPhee: We are concerned that the public has a right to access. As we see things now, the public has very little access to public information. This bill appears to be a secrecy bill more than it does a privacy bill. We are concerned about that. We may not have the right to speak for all Canadians or anything like that, but most Canadians do not speak. It is not enough to try to do something in the ballot box. We want to be heard and we want to have people aware of the fact, particularly a prestigious and influential group like this, the legislators, to know that there are concerns out there, despite what the press says and despite what the people who purport to deal for us say or do. Right now we find there is a fair amount of corruption within the system. There are an awful lot of honest legislators still left. We feel that if we appeal to them, they will understand our position and legislate accordingly.

Mr McGuinty: A lot of honest legislators left. That is encouraging.

I raise this point–I am not being facetious–for this reason. We have here Natalie MacPhee, president of the Paralegal Society of Canada, and John Galbreath, qualifications examiner, and she

has listed a number of observations, which I think are, to my ordinary, untrained, lay mind–I was almost offended by the previous presenter, who assumed we were all lawyers. I had to apologize because all I could bring to bear upon this were the dictates of common sense, without a legal background.

I hope you have a copy of your statement. I think the very practical and very penetrating comments and observations you have made on behalf of the paralegal society reflects, to my mind, the sense of professional responsibility and concern regarding the implications of this Freedom of Information and Protection of Privacy Act.

I am also intrigued because, in my experience, the status of paralegals in our society is somewhat ill defined. To my mind, and I have discussed this with my sons who are lawyers and other lawyer friends, they seem to wander in a kind of no man's land, with rights recognized in some cases, but with mandates not adequately, clearly defined, and areas of legitimate authority.

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All this is simply for the purpose of hoping that some time we will have some concern, in some context, and that the status of paralegals in Ontario will be discussed in the context of some legislation, because I perceive a dichotomy between what I have been told, sometimes by gossip in the community, legal and otherwise, and by the very fine, thoughtful and, I think, convincing and penetrating observations we have had today.

The Chair: Thank you for your comments. I understand that there are areas of our government studying that particular question.

Mr McGuinty: Will they be coming before this committee?

The Chair: I have no idea.

Mr McGuinty: Could we find out?

The Chair: We certainly can make inquiries and we will inform you.

Mr McGuinty: I think it is more important, in courtesy and in keeping with decorum and the open concept of government that we profess, that the president of the association be informed likewise. I think that would be a reasonable expectation.

The Chair: I think that is a fair comment, and we can ask the clerk to make some inquiries as to where that might be, presumably in the Ministry of the Attorney General, and whatever information is publicly available we certainly would be very happy to communicate with the society.

The Chair: Mr Smith, you had a comment or question?

Mr D. W. Smith: I think I am going to use mine as a question to Ms MacPhee. In your presentation you referred to small municipalities and possibly recreation committees having closed meetings and maybe spending $1 million. By the way, I am another member here who is not a lawyer; I have no legal background whatsoever. I do not know what you would classify as small, but you mentioned recreation committees that may be having closed meetings. Are there other groups that cause you problems from time to time?

Really, as a paralegal person, I guess I am trying to find out whether you try to lobby these recreation committees or other committees, if there are such bodies that you are concerned about, to help push funds in directions different from what the committees would otherwise do. I just do not know why you are concerned with recreation committees and maybe other ones.

Ms MacPhee: It is not just recreation committees; we are concerned with all committees. City councils very often have closed meetings as well and we are concerned about those too. Lots of money is spent in those committees and nobody really knows the membership of many of them. Members very often are appointed by council or by whomever and names, addresses and telephone numbers are never released.

We have the same problem with the Task Force on Paralegals. We never once could get a list of the members of the committee so that we could lobby them or just let them know that we, in fact, exist. All they had on their study committee were franchisors and they did not represent the independent paralegal at all.

We have people coming to us from all walks of life. They are interested in all different questions. We have paralegals who specialize in different areas. I was a volunteer for the past 18 years. Being a housewife and mother, my job was to act as community volunteer. One of the things I did was to be president of my community association, and I served on various committees. In that capacity, we saw what could happen if we had closed meetings, and now we see the same thing happening in the locale just outside of Ottawa. People are very concerned. A million dollars may not be much, but when you do that again and again, it starts to add up.

We are very concerned that we have access, at least, to the names and telephone numbers of these people and we virtually would like to eliminate these closed meetings, because we

really see no purpose in them. If there are closed meetings, we at least would like to have the minutes of the meetings or something to give us some indication of what went on there.

Mr D. W. Smith: If they are closed meetings, you would like to see minutes kept, even if you do not necessarily have access to them right now.

Ms MacPhee: That is right. Even if we cannot meet there with them and make submissions to them, we still would like to know that we know what is going on and what sort of input went into it.

Mr D. W. Smith: As a paralegal, do you have any legal training whatsoever, or are you a lawyer?

Ms MacPhee: No. I have a university degree, but it is not in that area. I do not feel that all paralegals need, or anybody in any field needs, schooling particularly. To have a teacher stand in front of a classroom and say, "Now, class, open the book to page 14, and tomorrow we are going to be tested on pages 14 to 28," is not necessary for everybody. Some people can only learn that way; other people can learn on their own.

We have this in our briefcase because we just came from the meeting. This is a petition for enacting legislation. We have had preliminary meetings now with the heads of some of the universities and we are trying to get a paralegal study program in the universities. Once that is done, then we will be sure that all paralegals–and there will be some element there of equivalency education–will be properly trained, will be properly educated so that they will specialize in one area and be extremely good in that one area.

The Chair: Would Mr McGuinty care to comment on the compliments the speaker made to university professors?

Mr McGuinty: There is a conflict of interest.

Mr Polsinelli: I wanted to ask Ms MacPhee if it was fair to say that her concerns, at least in terms of the first part of her presentation, generally centred around the perceived restrictions on an individual's right to access his own files.

Ms MacPhee: Right.

Mr Polsinelli: Then I have some problems, because as I read the bill, it seems that a head does not have very much discretion as to whether or not to release to the individual his own files. Section 14 quite clearly says, at least in my mind, "A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except," and then it lists a series of exceptions.

Ms MacPhee: And it is the exceptions that we find difficulty with.

Mr Polsinelli: But what I am saying is the right of access of the individual is not restricted; that is, any individual would have the right to access his own personal file.

Ms MacPhee: Except–

Mr Polsinelli: No, those are restrictions for other people who want to access. Let's say you are talking about my file held by some institution. I would have an unfettered right to access that file, but if you wanted to get my records you would have to qualify under one of the exceptions. The restriction that I see that would apply to an individual accessing his own file is perhaps in section 13 of the bill, where it would endanger my health or my safety. Perhaps I can have some comments from the minister, because that is how I read the two sections. If I read them the same way that you read them, I would have problems with it too. So maybe we could have some comments from the minister on that.

Hon Mr Elston: Your reading of the sections is the way we read them as well, that it is for a third party trying to get somebody else's material. I was just going to go a little bit further on it when your comments were finished. The question about when even an individual may be precluded from getting his entire file, for instance, might revolve around instances of adoption, where we end up with the issue being whether or not a natural parent wishes to have his or her name divulged to a child given up for adoption. In those cases the question becomes, whose file is it, whose personal information is it? As a Legislative Assembly, we have wrestled with the very fine line in trying to establish specific rules to govern those types of situations. Basically, the subsections you have just read are identically read in our minds as well.

Ms MacPhee: Clause 14(2)(h) reads "the personal information has been supplied by the individual to whom the information relates in confidence." What exactly does that mean?

1700

Mr Polsinelli: As I interpret it, those are all sections which qualify what is an unjustified invasion of personal privacy that brings you under the exemption clause in subsection 14(1). As I read section 14, the individual has an unfettered right to access his personal file. If anyone else, a third party, wanted to access it, he would have to come under one of the exemptions.

Clause 14(1)(f) says that one of the exemptions is "if the disclosure does not constitute an unjustified invasion of personal privacy." Subsection 14(2) seems to talk about what an unjustified invasion of personal privacy is. It still relates to third parties, as I read it.

Hon Mr Elston: That is right. As well, there is a presumption that is outlined in subsection 14(3) and a whole series of items, "A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if," and you go through those lists. That counterbalances some of the items that are seen in subsection 14(2), but basically this all circulates around whether or not somebody other than the individual whose information is collected should have access to that.

Ms MacPhee: Perhaps this could be clarified because that is not the way any of us have read this. We are very concerned about it.

Hon Mr Elston: But a good number of us around here have read it that way. It seems to be clear to us that it is the third party's request to get somebody else's information. I do not think you can make it any clearer than it is. If you read the section in isolation, you may be unable to associate it with the third party, but I think it is relatively clear. Section 38 as well speaks about the situations where your own personal information may be held without divulging. So Mr Polsinelli's interpretation is the way that we would read this as well.

Ms MacPhee: The way we have read it, it looks as though there are enough qualifiers there that if it is going to damage the reputation of the institution, it will not be given to you. If it is going to mention somebody else's name, the file will not be given to you.

It says here in subsection 14(1), "A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except," and the exceptions are listed here. It seems very clear to us that what we are suggesting is correct. If that is not correct, then–

Hon Mr Elston: No. If I applied to get information on you that is held by a municipality, it would not give it to me under section 14 except under clauses 14(1)(a), (b) and (c). I would have to meet some tests, and there are other tests in subsection 14(2), subsection 14(3) and subsection 14(4). It is for me requesting information about you, about some other person, that those tests would have to be in effect. Section 14 in its entirety would have to be considered.

Mr Polsinelli: The individual is exempted in subsection 14(1). It says, "A head shall refuse to disclose personal information to any person," and then you can read, "except the individual to whom the information relates." So the information cannot be disclosed to any person unless he meets certain tests, but the exemption there is the information–

Ms MacPhee: In clause 14(2)(g), for example–

Mr Polsinelli: That still relates to what an unjustified invasion of personal privacy is.

Ms MacPhee: No matter whether you release the information to me or to a third party, it is personal information that "is unlikely to be accurate or reliable." What is that information doing in the file in the first place if it is unlikely to be accurate or reliable?

Mr Polsinelli: The individual to whom that information relates has a right to access the file. If that information is unreliable or inaccurate, he can just put in a correction.

Mr Sterling: It could be information in a police investigation.

Ms MacPhee: But we should be able to have the police information as well.

Mr Polsinelli: But you should not be able to have it on my file.

Ms MacPhee: For example, if I have a client who needs it, I should be able to get it.

Mr Polsinelli: Your client can get it.

Ms MacPhee: If he is working with a friend of his or something, they should be able to get it if it is police information, but here it says if "the personal information is unlikely to be accurate or reliable." What is inaccurate or unreliable information doing in anybody's file, especially if it is a police file?

Mr Sterling: All investigation files are like that.

The Chair: Let just warn you that we have about two minutes left in the 30 minutes that was allotted. Are there any important issues that either the committee members or the presenters want to make within that time frame?

Mr Polsinelli: If I could just talk about that point again, I think it is understood that not every file is going to be accurate, because the people who prepare the files are human beings and they can make mistakes. What this act does is to give the individuals the right to access their own files. If there is a mistake in their own file then they can ask for a correction or put in a statement indicating that the file is inaccurate. In terms of

that section I think that is essentially what we are talking about there too, but in terms of the individual accessing his own file I do not see any restriction other than possibly section 13 of the act.

Ms MacPhee: Under clause 14(2)(h), "A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether the personal information has been supplied by the individual to whom the information relates in confidence."

Mr Polsinelli: That again goes back to third parties and that aids in assisting what is an unjustified invasion of personal privacy for a third party. Perhaps you should sit down with the act and read it section by section with the assistance of a lawyer.

The Chair: We are just about out of time, about 30 seconds. I would ask the presenters if they have any concluding comments. Ms MacPhee, you can have the last word.

Ms MacPhee: I do not know. When I am talking to lawyers I never get the last word. This is very unusual.

Mr McGuinty: Just quote Shakespeare, "Kill all the lawyers."

Hon Mr Elston: You did not get the last word when you were talking to Dalton McGuinty either.

Ms MacPhee: No, we are not down on lawyers or anything like that. We really are not. We need lawyers and we very often refer our people to lawyers as we do to the Credit Counselling Service of Metropolitan Toronto and the numerous other places. If there is something wrong with what I said, fine, I will be the first to admit there is something wrong with whatever I may have said, but what we are concerned about is we do not want to have all these restrictions on the public.

We need to have access to our files. Right now that is not happening. We have read through this bill quite carefully and some of us are lawyers–I am not but some others are–and we are concerned that what this is really going to do is restrict people from having access, just as they are restricted now. People cannot get their medical files without court orders and that costs a lot of money. People cannot get access to their criminal records, they cannot get access to police files and we are concerned about those issues, very concerned. If there is another section that you think this fits into better, fine, let's correct those other sections. But as we saw it, it fit into this section very nicely.

The Chair: Thank you very much, Ms MacPhee, for your thoughtful brief and comments. I am sure that the committee members will take them into account when we get into clause-by-clause.

The next item on the agenda is clause-by-clause consideration of the bill. I am in the hands of the committee, if you wish to proceed at the present time or start fresh tomorrow.

Mr McGuinty: We are awfully tired, I think.

Mr McClelland: I would comment on that. Quite frankly, I understand Mr McGuinty's sentiment.

Mr McGuinty: It is a function of age.

Mr McClelland: However, there will doubtless be some discussion. My one concern further to that is the absence of a representative from the official opposition. There will be some discussion and I am concerned about the time.

The Chair: Mr Kormos did give us written instruction to proceed in his absence.

Mr McClelland: That being the case, we have 56 sections to go through and I would hate to see us at the end of the day tomorrow rushing things through. I think that the more we can do today the better off we will be going in tomorrow. My suggestion, for what it is worth, would be that we proceed and get as much done as we can. With respect to the minister's schedule and all the other considerations, I think it is appropriate that we move ahead.

The Chair: Are there any further comments?

Mr McGuinty: Could I ask a question?

The Chair: Yes.

Mr McGuinty: Please, may I go to the bathroom?

The Chair: Yes you may, Mr McGuinty.

Miss Nicholas: Can we go with him?

Mr Sterling: The government has sprung many amendments on us today which virtually change the bill totally, as I understand it, so I am going to at least need until overnight to look at them.

Mr Polsinelli: That is an exaggeration.

The Chair: The agenda, which indicated at least the start of clause-by-clause consideration, was circulated to all committee members. It is open at any stage of the proceedings for any member to move that a particular section or clause be deferred for consideration, but we do have a responsibility to the taxpayer as well. We

are scheduled to sit until six o'clock, so we have 40 minutes left of today's session. If we can make good use of that time, I do not see any reason why we should not proceed.

Mr Sterling: I move that we suspend sections 1 to 56 until tomorrow.

The Chair: Are there any serious comments?

Mr Polsinelli: If we have decided to do clause-by-clause, we should proceed with clause-by-clause unless we have some strenuous opposition from the representative of the third party. If we do have the opposition, then we will adjourn until tomorrow. Do you want to do it today or do you not?

Mr Sterling: No.

Mr Polsinelli: All right, I move we adjourn until tomorrow.

The Chair: We have a written note here from Mr Kormos–he was briefly in attendance this afternoon–addressed to the chairman of the justice committee, "Please proceed notwithstanding my absence," signed "P. Kormos." On the other hand, if the representative of the third party does not want to accept sole responsibility of offering opposition comments, then perhaps the government side will concur in his request and defer. At the present time we have a standing agenda item, which is clause-by-clause consideration. Unless we hear a motion approved to the contrary, I presume we should continue.

Is there a motion on the floor at the present time, Mr Polsinelli?

Mr Polsinelli: I indicated that this side of the committee is prepared to move diligently through the clause-by-clause consideration of the bill today. If, however, the member of the official opposition is not here–and we understand he has given us permission to proceed–and the member of the other opposition party is not prepared to proceed, then what we should do is adjourn and accede to his request to handle the clause-by-clause tomorrow. My motion was already placed, that we adjourn the committee.

Miss Nicholas: I would like to hear again from Mr Sterling that he does not want to proceed now. I want to hear that again. I do not know if that was said in jest.

Mr Sterling: Basically, if you look at our agenda today there was the opportunity perhaps to get to clause-by-clause by 5:30. I do not know whether Mr Kormos looked at the fact that we were going to get to clause-by-clause at this time. I am being cautious in saying that I do not think that we should go ahead. All you are going to do is precipitate the thing going back to committee of the whole House if you anger him. I do not anticipate this taking a great deal of time tomorrow unless Mr Kormos completely surprises me.

The Chair: There is a motion on the floor to adjourn until tomorrow which is under discussion. Are there any further comments?

Mr D. W. Smith: When the official opposition is not here in body and mouth, I think we would have to regurgitate a lot of the things we say today, so I second his motion. I am prepared to adjourn at this time.

The Chair: We will put the motion to a vote.

All those in favour of Mr Polsinelli's motion to adjourn until tomorrow at 3:30 pm?

All those opposed?

Motion agreed to.

The committee adjourned at 1715.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 5 December 1989

The committee met at 1537 in room 228.

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1989
(continued)

LOI DE 1989 SUR L'ACCÈS À L'INFORMATION MUNICIPALE ET LA PROTECTION DE LA VIE PRIVÉE
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MUNICIPAL FREEDOM OF INFORMATION STATUTE LAW AMENDMENT ACT, 1989
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Consideration of Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, and Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

Etude du projet de loi 49, Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux.

The Chair: I call the meeting to order. We decided that we would consider clause-by-clause today. However, we have had a motion presented to us and there is one other issue, the possible presentation by the Association of Canadian Archivists represented by Mark Hopkins. I believe that brief was distributed yesterday and Mr Hopkins is here today to request to make a submission and/or to answer any questions on his brief.

I would like to receive some direction from the committee whether we will allot any time for the Association of Canadian Archivists, represented by Mr Hopkins. If we decide to do so, then we will consider Mr Sterling's motion after that.

Mr Sterling: The purpose of my motion, of course, is so that Mr Kormos and myself–I would like to participate in the debate on Bill 68 this afternoon in the Legislature. If the motion is lost and Mr Hopkins would like to present his brief to the remaining members of the committee, I have no objection about that part of it.

All this motion does is to try to postpone the clause-by-clause; it does not postpone in any way our consideration of other things. I do not intend to–

The Chair: Mr Sterling, we had decided to do clause-by-clause and were under the impression that the presentations had been completed. If we are going to hear another presentation, I believe that logically it would probably be the next order of business, for us to make that determination and then to determine the issue of your motion. Is there any further comment on the issue of an additional presentation?

Mr Sterling: I have a motion on the floor and I want it attended to.

The Chair: I do not believe the motion has been placed yet.

Mr Sterling moves that whereas several municipalities including the city of Scarborough, the town of Aurora and the town of Bracebridge have asked for more time for response to Bills 49 and 52; and

Whereas public hearings were completed yesterday December 4th; and

Whereas the Legislature is considering today Bill 68 which is of interest to many members of this committee; and

Whereas Bills 49 and 52 do not come into effect until January 1, 1991; and

Whereas the committee's researcher has not yet prepared a summary of public presentations,

Therefore, the clause-by-clause consideration of Bills 49 and 52 be postponed and scheduled at an appropriate time by the subcommittee of the justice committee.

Mr Sterling: After returning to my office and reading over the various presentations that had been made, not in front of this committee but those we received from the clerk of the committee, and after considering the complexity of Bill 49, it would have been my desire to have–perhaps I should have asked the researcher yesterday to prepare a chronological summary, a section-by-section comment, of the various submissions the public had made to this committee.

It is my belief that it is probably prudent in a general sense, when a committee has public hearings, to allow a little bit of time to pass between the public hearings and the clause-by-clause analysis so that the research can be done

and so that members can have an opportunity to consider what has been said to them by the people who made presentations.

I am sorry for any misconceptions I led the committee to yesterday in saying that I thought we could go ahead with clause-by-clause today. As you know, Mr Chairman, I have submitted four amendments to the bill. I am just not certain whether there are other amendments I might want to take from the public submissions and present to the committee at this clause-by-clause analysis.

If we do not postpone, it may mean that when we report this bill we will just shove it into committee of the whole House and deal with it there again, which I think would be a waste of time.

I do not intend to argue the motion at length. That is why I presented the motion in this way, with the basic reasoning on paper, so that it would not have to drag out this part of the proceedings, because it is my intention to get back to the Legislature and participate in the debate on Bill 68.

Mr Kanter: I would not support Mr Sterling's motion. As I understand it, the history of this entire subject is that originally the access-to-information legislation was to cover municipalities. The municipalities were concerned and felt they had separate circumstances. Therefore it was split off at their request.

While it is detailed, I think it follows the general framework of access-to-information legislation that also applies to provincial ministries. I think Mr Sterling personally can take considerable credit, let me say, for the introduction of this concept into the Ontario Legislature. He, as much as any of us, is familiar with the subject at hand.

In terms of the committee proceedings, we have met over a period of about a month on this subject. We have heard a number of deputations from those who feel the act goes too far, from those who feel the act goes not go far enough. We had an understanding, quite frankly, at least with Mr Sterling–perhaps not with the official opposition–that we were going to deal with this bill today and it was on that basis that we have other matters scheduled that the committee has agreed to for the remaining days before Christmas.

I think the committee is ready and should be willing and able to consider the legislation today and I would hope it would vote against Mr Sterling's motion and vote to consider the bill on a clause-by-clause basis today.

Mr Polsinelli: I was unsure as to whether or not I was going to support this motion, but my colleague made such a persuasive argument that I am going to have to vote against the motion.

Mr Kormos: I thought Mr Polsinelli, when he spoke about his colleague making a persuasive argument, was talking about Mr Sterling. I support the motion. Mr Sterling is being generous, not only–

Hon Mr Elston: It sounds like he left his voice in Winnipeg.

Mr Kormos: I left a lot in Winnipeg, Minister, and none of it is on tape, or maybe it is and it is just waiting to be edited properly.

Hon Mr Elston: You have to be careful when you are in one of those former NDP bailiwicks.

Mr Kormos: That is right.

Hon Mr Elston: No telling what might happen.

Mr Kormos: In any event, Mr Sterling is being not only generous to me, but generous to the minister because surely the minister would want to participate and listen to the Bill 68 debate in the House this afternoon. More important is the fact that he cites the city of Scarborough, the town of Aurora, the town of Bracebridge as having requested some modest extension in time to participate in these committee hearings.

Surely the single most important thing about this motion is that it accommodates those communities. In view of some of the interesting and serious concerns that have been raised, and quite frankly raised with little subtleties, I submit that the submissions to date have probably been incredibly valuable in doing some of the fine-tuning required for the legislation. To ignore Scarborough, Aurora and Bracebridge might invite, not only their antipathy but might invite or court real danger in that they may well have input based on their own experience, based on their own insights into the legislation that could prove very valuable to the committee.

In a secondary way it accommodates those of us who will not be able to be here–I am speaking of myself–because of my commitment to matters that are being debated in the Legislature. Obviously, to pass this motion which is on the floor would accommodate the group that wants to make a submission today; it will flow automatically from that. Because of my peculiar situation I would look to committee of the whole in an effort to do clause-by-clause then, as should be done here, but only deferred for a couple of weeks. I am hoping, notwithstanding the fact that

Mr Kanter obviously has a strong impact on Mr Polsinelli–

Mr Kanter: It is not always so.

Mr Kormos: He has had a strong impact on Mr Polsinelli today, for whatever reason. I hope that other members will see fit to accommodate people who want to make submissions, groups that want to make submissions. I hope the committee will see fit to accommodate Scarborough, Aurora and Bracebridge, which want to participate in this process. Their contributions are more important in this legislation probably than in any other types of legislation.

Mr McGuinty: Could we perhaps check with the clerk whether these these municipalities were given the same advance notice of their right to present briefs as the others from which we received briefs?

The Chair: I just checked with the clerk and his best recollection is that notices went out to all municipalities around 27 October or thereabouts.

Mr McGuinty: I will explain how I feel about this in terms of an analogy. When I worked for a living as a teacher, when I assigned essays, there was always a due date by which the essay had to be submitted. I never gave extensions for this reason: There was always the possibility that those who made the deadline could have written a better essay had they had more time. We have imposed upon these others in the sense of deadline and they have complied with it. It would be in a sense unfair to those who have made submissions earlier, because had they had more time–I cannot really see the logic.

We are aware of no serious extenuating circumstances that justify requests for extension, if we have had such requests, so I do not find that very convincing. The argument whether we are going to adjourn committees on the basis of what matters happen to be going on in the Legislature, I think can be a constant source of delay and I would not like to see that precedent established here. I have been influenced by Mr Polsinelli. He had a kind of a chain effect, so I can support this motion.

1550

The Chair: No offence intended, but rather than sounding like a professor you are sounding more and more like a lawyer every day.

Mr McGuinty: On a point of order, Mr Chairman: I will have to take exception to that. I want the record to show that I take exception to that allegation.

The Chair: It will show it.

Miss Nicholas: I just want to make the point that I was one of those who ensured with the clerk that when we decided to extend our hearings for another two or three weeks Scarborough in particular would be notified that we had done this, because I was concerned it would not have enough time to present. If we were to accept Mr Sterling's motion, I would just ask how long we are supposed to wait for them to even reply in a preliminary way that they are going to come before this committee or give us some kind of presentation.

If we do consider supporting it, the problem I have is, how long do we give them to respond? They have made no effort I know of to contact the clerk since they have been told of this extension of three weeks. I feel there will always be more people who want to make submissions every day if we allow them to continue to do that. While I think we should hear from everybody who wants to be heard from, I am not convinced the city of Scarborough has shown its true intention to come before this committee.

While I would welcome them to come here as representatives of the place I grew up in and represent, I think they have not shown that they are eager to come before the committee. I would hate to wait an indefinite period of time for them if they really have no intention of coming here. I just wanted to put it on the record that we did make an extra effort for them. I was anxious to hear from them, but they have given me no indication they want to come before this committee.

Mr Sterling: I do not want to prolong this. We are now going to go through Bill 81 in the Legislature. Bill 81 is the cleanup for Bills 2 and 3 because this committee would not listen to us. Mr Kormos and I lost, last 3 August or 4 August, in saying: "Give us a little bit more time. This thing has to gestate a little bit longer for the amendments to come forward."

At that time, if you remember, we had 45 amendments to Bills 2 and 3 from 3 May or 4 May to 3 August or 4 August. Now we have Bill 81 in front of us, which the Attorney General (Mr Scott) is asking us to pass to clean up Bills 2 and 3 which we passed last week or the week before.

There is no great political debate. I just want the best piece of legislation possible. If you guys want to go ahead, that is fine and dandy. I want to participate in another debate in this Legislature. I have done the best I can in giving you notice of my motion, and therefore if you decide not to go ahead with this motion, fine and dandy. I am not going to put forward my amendments in this

committee. I will put them forward in committee of the whole House.

I will ask the researcher to prepare, as we would normally prepare, a chronology and we can go back with an amended bill with the government amendments.

Mr Polsinelli: It almost sounds like a threat: "Either listen to me now or you will listen to me when we get back to the House." At least from my point of view, I think the other members of this committee have always tried to be as accommodating as we can. This is an open-ended motion. You want to defer it for how long? Let us talk brass tacks. When do you want to do the clause-by-clause consideration? When would you be prepared to do it?

Mr Sterling: I think you should make a phone call to each of those municipalities to find out if they are going to either come forward or not. We should have a summary by the researcher of all the presentations on a clause-by-clause basis so that we can put forward the amendments or not put forward the amendments. It would give Mr Kormos a little more time to review that information; he might want to put forward amendments on behalf of his party as well.

Mr Kormos: The matter can be dealt with so easily by the subcommittee. It is as simple as that. It could be dealt with expediently by them without interfering with the rest of the committee work. I do not understand what the problem is.

The Chair: There is a motion on the floor. Shall we put it to a vote? Does anyone want the motion read or do you all have copies? All those in favour? All those opposed?

Motion negatived.

Mr McGuinty: May I ask of the clerk when the brief from the Association of Canadian Archivists was received? Was it yesterday?

Clerk of the Committee: It was received yesterday and distributed.

Mr McGuinty: Were there any guidelines given to these people about how far in advance of yesterday this should have been in?

Clerk of the Committee: The original notice of hearings did contain a much earlier deadline for receipt of written briefs. I do not believe this association was one of those in receipt of the notice of hearings.

Mr McGuinty: I would move that in deference–we have had a chance to review the brief; a very thoughtful one–out of a sense of courtesy and in keeping with our open-government policy, we allow whoever is here–

Mr Kanter: I think Mr Hopkins is here.

Mr McGuinty: –Mr Hopkins–to present his brief. I so move.

The Chair: Would you repeat the motion, Mr McGuinty?

Mr McGuinty: I move that the representative from the Ontario Association of Archivists be given leave–is that a legal term?–

The Chair: It is very lawyerlike.

Mr McGuinty: –be permitted to present the brief on behalf of the association.

The Chair: The group is the Association of Canadian Archivists, for the record.

Miss Nicholas: I have one comment. I know this came in yesterday and perhaps we were unable to schedule it appropriately. If we receive another brief tomorrow, will we then schedule that or entertain it on Monday, or are we putting some kind of conclusion on this? I am more than willing to continue with this for the next year. I am sure the minister would be more than pleased to hear that. I know we got a stack of briefs yesterday and I wonder if this is going to be ongoing.

The Chair: I do not think we should deal with a hypothetical situation. It may very well be that we complete clause-by-clause this afternoon.

Miss Nicholas: It was not hypothetical that we got a few briefs yesterday.

The Chair: All those in favour of Mr McGuinty's motion? All those opposed?

Motion agreed to.

The Chair: I would ask Mr Hopkins to come forward. The normal procedure is that a presenter has 30 minutes, which includes time for questions from the committee. If you would care to proceed, please identify yourself for the record.

1600

ASSOCIATION OF CANADIAN ARCHIVISTS

Mr Hopkins: My name is Mark Hopkins. I am representing the Association of Canadian Archivists. I must start by apologizing for the delay in getting our brief to the committee. As a national organization, getting the appropriate people to vet the brief, review it and so on did take more time than we had anticipated. I appreciate your indulging us with the oral presentation.

I am sure you have heard a lot of briefs and will be reviewing a number that have been sent rather than appeared as deputations, all arguing why we want some kind of special changes to the legislation. It would be appropriate to say, "Why

for archives?" One of the problems that archives have is that they ultimately apply virtually all the exemptions. Inasmuch as we acquire records from the various governments of which we are a part, we will apply exemptions probably more extensively than any other institutions or any other parts of institutions.

The other point that is worth making is that when one looks at the statistics of the number of requests made to archives federally, and there is certainly a longer history of statistics in that jurisdiction, and, more recently, with statistics at the provincial archives level, one can see that there is a fair level of business, certainly federally, on both the access and privacy side of the legislation. The National Archives usually appears in the top five in any given year. We have issues, then, that relate to the range of exemptions and how we should apply them.

What also makes our circumstances somewhat unique is that the legislation for the most part is directed towards what we would consider the active side of records management, the ongoing operations of a government institution. For archives that ultimately acquire those records and store them for potential use by a very wide range of researchers, that is usually a commitment in perpetuity. Some of our concerns arise from that area.

We made those introductory comments in addition to the introduction in our submission. I would now like to review with you some comments on a section-by-section basis. I also might say that our comments relate to both Bill 49 and Bill 52 and I will take them in their appropriate sequence.

On Bill 49, the comment we would make with respect to the definition of "personal information" is that it is problematic for people who want to use archival records because it requires that we be able to determine the death date for the individual. That is sometimes difficult to do in records. It is quite often not a part of the record the researcher may be requesting to see. Admittedly, that is not an onus, that burden of proof does not fall to the archives, but it does fall to somebody. Whether it is on the archives or a member of the public requesting those institutional records, it is none the less a piece of work that has to be done and can be somewhat difficult to do.

We would ask that, for the role of archives in supporting research, you entertain the possibility of a harm test when it is not possible in a reasonable search to determine the date of death and also that there be some other considerations with respect to date of birth and so on which we can address later.

The definitions that define a municipal institution will probably be the most problematic area of the legislation for municipalities to deal with. My expectation is that those municipalities from which you are awaiting briefs are grappling with what their institution is and what it includes, particularly with respect to special-purpose bodies.

Recognizing that archives will ultimately be a part of some type of institution, be it a municipality or one of the local boards and, in the case of some regional archives, having to serve a number of institutions, it is quite important to know, for example, what is the institution to which we might have to refer a request as the kind of primary interested party.

I recognize that this is a very difficult concept to develop within Bill 49 and there are a number of options there. But perhaps some clarification would exist if the concept of what is included in an institution addressed the administrative accountability of a local board, a special-purpose body, and some of that relates to funding, as our brief indicates; perhaps 51 per cent funding from some level of government.

We also feel that ultimately–and we all have to make some assumptions, I suppose, about how this bill will ultimately be laid to rest in the active world–it would be useful to have the Information and Privacy Commissioner given the authority to conduct investigations or at least to hear appeals on the designation and the composition of institutions. I think that is going to be a problematic area for municipal archives and for researchers, and we would encourage you to consider including that within the Information and Privacy Commissioner's review and appeal authority.

Moving on to some of the exemptions, I guess the first one I would address is the section 9 exemption, relations with other governments. The problem we have with this one is that we feel it needs some kind of a time capitation on it. In other words, if another level of government, in dealings with the municipality–and those can occur with royal visits or protocol activities of that nature and others as well–sends a document marked "Confidential" or "Secret" or whatever the designation may be, there really is no capability to downgrade that with time. In most instances, confidentiality is time-sensitive.

Again, referring back to my earlier comment about the nature of the archival business in perpetuity, how are we going to deal with getting

these declassified, if you like. I think declassification is still problematic in the federal government and if anything comes with a classification stamp on it, it may not be easily determined what the status of that document was 25 or 30 years ago. They may not even be able to find it in their files.

With respect to section 14, the personal privacy exemption, what we would like to see here is a very clear indication of what researchers face when approaching municipal institutions. We make the very practical suggestion that a draft research-use contract be developed in the regulations and that would then be usable by all municipal archival institutions and would be a standard test across the province and an even playing field for all applicants or requesters.

We also feel this is an area where the Information and Privacy Commissioner should periodically engage in the consultative process to ensure that the policies with respect to research use of personal information develop as research changes over time. Certainly, the role of archives and the role of research have changed greatly with the passage of time. Perhaps when we went to school we all listened to boring constitutional history and now we have multicultural history, women's studies, social history, economic history and many other fields. Some of these do require the use of personal information, recognizing the very broad range of personal information as it is defined in the act.

Then, as general comment that we make with respect to virtually all the exemptions, again to reiterate my point, is the issue of time capitation. What we are proposing with respect to sections 8 to 13 is for archives to apply some kind of time capitation on all of those; otherwise your exemption continues in perpetuity and we feel that is very problematic ultimately. Although there may not be a lot of sensitivity to that problem at the current time, it cannot help but develop as time goes on and the records get older and so on.

1610

With respect to the public interest override section of the bill, we feel that the importance of research, the role it plays in our society and in understanding our society should be recognized and that public interest should be defined to include research as well. Research is very much in the public interest.

With respect to sections 25 and 34, they are somewhat separated but we have a common recommendation for those; I think perhaps it is a fairly minor but none the less important one from our perspective. When the municipal institutions create their central listing of program descriptions and classes of records, their central listing of personal information banks and the authorities, uses and disclosures and all that sort of thing, we recommend that those be time-dated; that in 1990, as municipal institutions go about doing that and as they are amended and updated in successive years, the institutions file away a single copy as a permanent record of what they held at that point in time.

I think that becomes a very important mechanism under this legislation, to ensure that there is some integrity to the process and that people have some confidence in the process. For example, if a list of classes of records is created in 1990 and some of those records have a 10-year or 20-year retention period and I come along 20 years from now, then I should be able to go back and see what should have been maintained for 20 years; that is, my personal information by that municipal institution.

Moving on to section 45, on the role of cost, I guess we have some concerns that municipalities not inadvertently create any financial barriers to the use of government information. In many instances this is information that is received, created, managed or used based on tax revenues from various levels of government. In maintaining an open and accountable society, we would not want to see fee scales that create any barriers. I think the way to achieve that is to provide the Information and Privacy Commissioner with the responsibilities and the duty perhaps to monitor the fee scales periodically to ensure that there is some reasonableness to them and also that there is some equity across the province.

We have a couple of comments to make on the regulations and one of those, as I touched on earlier, is about the designation and composition of the institution and the delegation of the head to other officials, be they elected or administrative. My expectation is that a year or two from now we are going to sit, look back and wonder at the range of municipal institutions and delegations of responsibility. It is going to be a true measure of human ingenuity and I think in some instances the area of delegation is going to be problematic for people approaching municipal institutions seeking information.

They very well may need some appeal mechanisms, recognizing that there are going to be some awfully large institutions in this province, particularly within this area, and their ability to pull together information and respond in a complete, comprehensive and consistent

fashion is going to be quite a challenge for them. To ensure that the bill works, adding that kind of responsibility to the privacy commissioner's functions will perhaps clear away some maybe inadvertent bureaucratic logjams that may be creeping up for us.

Certainly I think that if councils and their senior committees or special committees retain the full authority of the head, there may be some questions there. In undertaking the head's authority how much information are they seeing and can we ensure confidentiality with this large group of elected officials? I think that is a reasonable concern.

Moving on to subsection 50(2), the one that provides the pre-existing access rights with the exception of personal information, there is a grave area of concern for archives here. We appreciate the safeguarding of pre-existing access rights. That is certainly important to researchers. Recognizing, though, the very comprehensive definition of personal information, it does pose some problems for archival research. Although personal information, in the context of personal information banks, may be somewhat easier to deal with from the research perspective, personal information in the context of other files is more problematic, and recognizing that one has to sever and so on can create quite a workload there.

Also, I think that while in time some of our record systems can be constructed or reconstructed in such a way, this mix of personal information and general information will ultimately be segregated. That is not so now and we inherit all those existing filing systems with that mix of information.

In conclusion then, with respect to those pre-existing access rights, and particularly personal information, we feel that including research in the definition of public interest is an important positive step, that municipal archives should be given some discretionary powers to release personal information based on a "reasonable harm or injury" test and that the 30-year capitation provision that exists 30 years after death should be broadened to include the alternatives of 75 years after the record was created or 100 years after birth. That gives us some flexibility that we need.

I guess I have just a single comment with respect to Bill 52. This one is very problematic for municipal archives. In most municipalities, virtually all municipalities I can think of, the municipal archives exist in the clerk's department. In many municipalities the access and privacy function, that central co-ordinating function, is going to reside in the clerk's department.

When we look at the wording of the amendments to the various regional municipality acts and to, I believe, section 87 or section 88 of the Municipal Act, it refers to the traditional documents that one finds in the clerk's department, and then the amendment says, "Any person may at all reasonable hours inspect any of those records, books or documents," those traditional documents relating to the legislative process. Then it goes on to say "and other documents in the possession or under the control of the clerk."

I am not a lawyer and I take that wording at face value. I say that the archives, if they are located in the clerk's department, place those documents in the possession and perhaps even under the control of the clerk. They are in the possession of the clerk, any of those documents—our personnel files, our medical files, our AIDS files, our law enforcement files—all those things, if they reside in a municipal archives or record centre in the possession of the clerk. I see this incredible tension between what you are attempting to do with Bill 49 and what that amendment will do with Bill 52.

1620

I suppose it is reasonable to say, "Well, fine, take it out of the clerk's jurisdiction." But I am not so sure that we should do that. That affects traditional reporting relationships, it may reflect pay classification, things of that nature, and that perhaps becomes a little bit more obtrusive. I would suggest that just deleting that phrase "and other documents in the possession or under the control of the clerk" sweeps the issue away. We have all the exemptions and responsibilities and so on in Bill 49.

The wording then stands in those amending sections of Bill 52 and it is entirely clear. Clarity is so important. In the absence of clarity, we invariably will end up before the Information and Privacy Commissioner. We perhaps could enter into a long and interesting debate as to the intent and meaning of those particular words.

I think those words created tension between the two bills and that some of your staff have a different opinion. I think, though, that what you have to do is provide clarity, because in many municipalities we do not want to see them turning to all kinds of legal opinions and so on, with the cost plus the time delays of that. And we do not want to add any appeal burden to what probably is going to be a fairly large function for the

Information and Privacy Commissioner, dealing with municipalities.

In closing, I can say that archivists across the province and across the country are impressed with the bill and are anxious to see it in place. I am sure we all would like more time and resources for implementation. Maybe those will not come, but it certainly clarifies in many ways the playing field for people using archival records or records in active filing systems of municipal institutions, and that is a positive step. We do raise these issues of concern with you and encourage you to clarify them to the extent that is possible.

Mr McGuinty: I have a comment. I do not know who wrote this document, but we very rarely come upon a document written with such sensitivity and clarity. Please commend the person, Jennifer Bunting or whoever wrote it, on the last paragraph. "Our papers and records are the collective memory of our people" is a very beautiful statement. "While the concept of privacy must be defended, the integrity of the collective memory must be maintained, and the right of the people to access it should be unlabouring and clear." Apart from the conversion of the noun "access" to a verb, that is a very apt statement.

But I have one question. You mention the task of determining who is deceased and for how long, but I did not think that was a problem. Are there not conventional medical standards to determine that someone is dead? Would the minister know?

Hon Mr Elston: I think the real problem is in finding out whether or not the person who was in the municipality actually is still living in another jurisdiction way beyond the boundaries of the place where he or she might have been recorded at one time.

I think that is an issue people have to deal with. I guess the same could be said for anybody who is mentioned in a public archive, for instance in Ottawa. The brief mentioned the Stacey biography of Mackenzie King, for instance, and I am sure that there had to be some sensitivity to people still living who were mentioned in the Mackenzie King files. It is the usual practice there, because of secrecy requirements, to have at least 30 years pass as a minimum and also apply what is called the harm rule, I guess, to a decision to release that information.

Basically, I think some of the exemptions that are put forward in the text of your material might be just as difficult to apply in the sense that you still have to find out birthdates and other things about people if you are going to have 100 years, for instance, if someone is to be measured in terms of harm for the 100 years.I have a good number of people now who live beyond their 100th birthday, surprisingly enough, even in good old Bruce county and so, in my view, a standard like that still would have to be overridden by the application of the test of harm for release of information. I do not think we can actually standardize it.

The difficulty is noted, but I do not think the legislation itself can get by those practical difficulties with some formula or by adopting a number. For instance, it may be very clear but you still have the difficulty of sorting out when the person was born and whether or not there is harm to that individual, because the mere fact that a statute says 100 years have passed since a birthdate still does not leave me feeling comfortable if the person is done irreparable damage because he or she is living and participating in society in another jurisdiction.

Mr McGuinty: I am very embarrassed. I was following Mr Hopkins's presentation and looking at another brief, and it seemed to me that he was following the same sequential order as the one we received from Jennifer Bunting. What I had to say to commend the propriety and sensitivity of language applies equally to your own, Mr Hopkins. I am looking at the last paragraph. It is just a delight to read this quality of presentation, sir; I mean that.

Mr Hopkins: I will convey your comments also to Ms Bunting.

Miss Nicholas: I just want a clarification on what the minister brought up. You said 30 years after death, 100 years after birth and 70 years–I forgot the third prong of your suggestion. In any event, I had the same concern when you were speaking of the 100 years after birth. I was curious as to what generated it, whether it was an "and/or" situation or a situation where you perceived 100 years after birth superseding the 30 years after death. I was grappling with that too because I do know how many scrolls for 90th and 100th birthdays I have been delivering lately. I wondered whether it was an "and/or" situation in special circumstances or whether there was a reason behind that and what you had focused on.

Mr Hopkins: We are not looking here for the least test. What we are seeking is a number of options. The act now says 30 years after death. If it is difficult or not possible to establish death, what else can we do? Can we establish a birthdate? Perhaps that is possible in the context of the records the request is being made on. If

neither of those are possible, then can we look at 75 years? Presumably there will be a date on some of the records that can establish when they were created; then you might look for 75 years after the record was created.

I do not think there is any magic to the number, whether it is 90, 100 or 120. Demographically, the largest-growing sector of population in North America is of people over 100 years old. Perhaps I am arguing against my case here. I think what we need is some flexibility in this area, because you cannot always establish a proof of death. Does that mean that the research cannot take place? That may not be reasonable.

I can give you some examples of really interesting uses of highly confidential information that is not that old.

The Chair: You have 30 seconds, Mr Hopkins. I believe your 30 minutes are up.

Mr Hopkins: Then I will not give you the examples.

Miss Nicholas: Anyway, that helped clarify it, just so that in some set instance you will have a way of determining when it can be released.

Mr Hopkins: That is right.

Hon Mr Elston: Just on the confusion between Bill 49 and Bill 52 and the difficulties expressed there about other documents and possession, I understand that the wording is actually the same as is now found in the Municipality of Metropolitan Toronto Act as well.

The jurisprudence around that indicates the records that have been talked about in that, to the extent that they are not to include records dissimilar to the items that are mentioned in section 77 of the Municipal Act, for instance, do not include every scrap of paper in the possesion of the clerk. So that may well provide us with the clarity with which we could proceed to implement the provisions of the legislation.

1630

Mr Hopkins: Can I reply to that?

Hon Mr Elston: Sure. I think you should be able to.

Mr Hopkins: Yes. You are quite right about section 19 of the Metro act. I am the Metro archivist and I have got a real problem with that wording. I do not speak as a Metro employee here but just in the context of the business we do. We now have some private sector organizations, with respect to some of the landfill evaluations under way, which are reluctant to put material into the hands of the clerk even for in camera meetings because under section 19 of the Metro act, I think, even in camera meetings are not beyond the purview of a request.

The other comment I would make is that I think the jurisprudence you are referring to flows out of some mandamus applications and we also have to recognize that this jurisprudence is in the absence of Bill 49. The jurisprudence was not tried on the Metro act. At one time that wording in the Municipal Act was common with the Metro act. It was changed back. For some reason the Metro act was not changed back. I would be interested in why.

But certainly the comment of the previous Metro solicitor was that there is very little in the hands of the clerk's department that would be closed. It is becoming problematic because some of the legal consultants are now recognizing that.

Hon Mr Elston: Bill 49, of course, now does have a certain number of tests with respect to the release of private information, which we actually spent some time on yesterday as we discussed with some of the presenters the circumstances that would allow a head to refuse access by a third party to somebody else's, an individual's record, for instance. So that may have a very modifying effect.

Mr Hopkins: But if deleting the wording would not change the intent of what you are trying to achieve with Bill 42–and I do not think it would would remove any doubt.

The Chair: Thank you very much, Mr Hopkins, for your brief and very thoughtful comments. I am sure they will be useful to the committee members as we proceed with clause-by-clause.

The next order of business is clause-by-clause. First is Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards, referred to the committee on 10 October 1989. Are there any comments, questions or amendments to this bill and if so to which section?

Mr Kanter: I will have amendments to subsection 10(1), clause 11(d), subsection 49(3), subsection 52(1) and subsection 52(3).

Miss Nicholas: Will we be provided with copies of these amendments?

The Chair: I understand copies of the amendments were previously circulated, but I believe some additional ones are available.

Mr Kanter: In addition to that, Mr Sterling indicated that he had certain concerns which he would have moved but for the fact that he is in the House at this time. I am wondering if we should perhaps indicate on the record those sections that

he had a concern about. I do not think it would be useful to move the amendments in his absence, but I think we should perhaps note the sections he has a concern about. He may wish to speak to them in the House.

The Chair: I believe Mr Sterling filed copies of proposed amendments with the clerk and perhaps they can become part of the record. I also believe Mr Sterling indicated that he would probably avail himself of the committee of the whole House to move amendments, and he has that option if he so chooses. I concur that we should show that he did indicate that he had the intention to move some amendments.

Mr Kanter: Perhaps it would be useful just to indicate that it appears Mr Sterling may wish to move amendments to subsection 2(1), subsection 3(3), subsection 4(2) and clause 45(1)(a) of Bill 49. I believe those are his.

The Chair: Thank you. I am sure it will be so noted on the record.

Hon Mr Elston: If I might just comment on three of those suggestions that Mr Sterling shared with us, it is our information that the Solicitor General (Mr Offer) does not feel that the amendments with respect to the police force amendment proposed and those items that surround that are necessary at this time at all to deal with any provisions that were brought forward by some presenters earlier on.

We have canvassed through our staff a reconsideration by the Ministry of the Solicitor General of the points raised by some of the police forces that appeared and they are content, at least in the department, that the bill will deal effectively with police forces in the overall ambit of freedom of information, protection of privacy. I just want to make that comment as well on the record.

The Chair: Thank you. If there are no other amendments forthcoming, I will ask the question. Are there any amendments or comments on the sections before section 10, that is, sections 1 to 9? If not, then shall sections 1 to 9 stand as part of the bill? All those in favour? Opposed?

Sections 1 to 9, inclusive, agreed to.

Les articles 1 à 9, inclusivement, sont adoptés.

Section/article 10:

The Chair: Mr Kanter moves that subsection 10(1) of the bill be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding thereto the following clause:

"(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute."

Are there any comments on Mr Kanter's amendment to section 10?

Mr Polsinelli: I think that is a good amendment. Did you think that one up all by yourself?

Mr Kanter: I consulted.

The Chair: If there are no further comments, shall section 10, as amended, stand as part of the bill? All those in favour?

The clerk has just brought to my attention that we have not actually voted on the amendment itself, so we will call the question on the first amendment, which was on subsection 10(1). All those in favour of the motion?

Motion agreed to.

Section 10, as amended, agreed to.

L'article 10, modifié, est adopté.

Section/article 11:

The Chair: Mr Kanter moves that clause 11(d) of the bill be amended by striking out "the" in the last line and inserting in lieu thereof "an."

Mr Kanter: I would refer to the resident grammarian on the committee, Mr McGuinty, should the committee wish an elaboration or an elucidation of the net grammatical impact of this amendment.

Mr McGuinty: It is dangerously close to the misuse of a subjunctive, but I will not take exception to it.

The Chair: Are there any comments on Mr Kanter's motion?

Mr Polsinelli: Again, a well-thought-out amendment.

1640

Motion agreed to.

Section 11, as amended, agreed to.

L'article 11, modifié, est adopté.

Sections 12 to 48, inclusive, agreed to.

Les articles 12 à 48, inclusivement, sont adoptés.

Section/article 49:

The Chair: Mr Kanter moves that subsection 49(3) of the bill be amended by inserting after "by" in the second line "a head or."

Mr McGuinty: How would the second line of 49(3) now read, Mr Kanter?

Mr Kanter: It would read, "Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2)."

I believe the purpose of this amendment is to make it comply or be in conformity with subsection 49(2).

Mr McGuinty: Is it a possibility that the second "a" there is redundant?

The Chair: We can now continue our discussion on the amendment to 49(3).

Mr McGuinty: I am wondering if the second "a," as it now reads, "a head or a person"–

Mr Kanter: I think that is grammatically correct. I generally defer to my colleague on matters of grammar, but I think it would be correct to say "in respect of a tort committed by a head or a person mentioned in subsection (2)." I think both "a"s should be left in.

Mr McGuinty: I defer to your judgement on that.

Motion agreed to.

Section 49, as amended, agreed to.

L'article 49, modifié, est adopté.

Sections 50 and 51 agreed to.

Les articles 50 et 51 sont adoptés.

Section/article 52:

The Chair: Mr Kanter moves that subsection 52(3) of the bill be struck out.

Mr McGuinty: I think it is a good idea.

Motion agreed to.

Section 52, as amended, agreed to.

L'article 52, modifié, est adopté.

The Chair: Mr Kanter moves that the bill be amended by adding thereto the following section:

"52a. (1) This act prevails over a confidentiality provision in any other act unless the other act or this act specifically provides otherwise.

"(2) The following confidentiality provisions prevail over this act:

"1. Section 90 of the Municipal Elections Act.

"2. Subsection 57(1) of the Assessment Act."

Mr D. W. Smith: Section 52a moves in ahead of section 53. Is that right?

The Chair: That is right.

Mr D. W. Smith: So there is no 52a at the present?

The Chair: There is no 52a at the present. It becomes a new section.

Motion agreed to.

Sections 53 to 56, inclusive, agreed to.

Les articles 53 à 56, inclusivement, sont adoptés.

Title agreed to.

Le titre est adopté.

Bill, as amended, ordered to be reported.

Le projet de loi, modifié, devra faire l'objet d'un rapport.

The Chair: We will next deal with Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, referred to the committee on 10 October 1989.

Sections 1 to 16 agreed to.

Title agreed to.

Bill ordered to be reported.

Mr Polsinelli: This is what it must be like in New Brunswick these days.

The Chair: We have some additional committee business which is included in the agenda, agenda item 2, consideration of proposed supplementary 1989-90 committee budget re witness fees, basically dealing with the issue of alternative dispute resolution.

Before we get into that, I will let the record show that we appreciate the presence of the minister throughout the committee hearings on the two bills that we have just completed. It is a pleasure to see the minister participate throughout the full hearings which is not usually seen at this particular place, so I want to express the appreciation for the committee.

Hon Mr Elston: Because this is introducing freedom of information and protection of privacy in the municipal sector, we will be continuing to work very closely, not only with this committee and other committees in reviewing freedom of information in Ontario, but also in conjunction with the office of the commissioner. We look forward to the assistance their office has already provided us.

Also, because of the concerns that are expressed around some of the areas of differences of opinion between us and some of the presenters, we will be monitoring that in a very close way to ensure that we provide scrutiny for timely and adequate delivery of information and protection of privacy at the municipal level.

I appreciate very much the work of the committee.

1650

ORGANIZATION

The Chair: I am going to ask the clerk of the committee, by way of introduction, to give us a bit of a preamble as to this particular agenda item. It is obvious, on the face of it, that in order to proceed with the alternative dispute resolution

issue, we are going to have to deal with the issue of committee budget. That is basically what the item is before us. I will ask the clerk to give a bit of background on this particular agenda item.

Mr Polsinelli: Before we do that, were we each submitted a copy of the supplementary budget?

The Chair: No, we were not actually. When the clerk indicates his preamble, it will include the fact that we were recently advised that it was a fairly urgent matter in terms of timing and so we are dealing with it basically on an ad hoc basis. But if we do not deal with it on an ad hoc basis, we will not be dealing with it at all.

Mr Polsinelli: All right.

The Chair: If I may, before we embark on questions, if we can have Mr Arnott just give a bit of background, I think that will put it in perspective.

Clerk of the Committee: Although the committee has not yet begun its discussions on alternative dispute resolution mechanisms, it will be doing that, I expect, beginning next Tuesday. The next Board of Internal Economy meeting, and I believe the last for this year before the House rises, is next Monday.

In the course of its hearings the committee may want to consider the situation in other jurisdictions, and one way to do that would be to bring in expert witnesses from a number of jurisdictions. The memorandum prepared by the research officer today does indicate in certain jurisdictions what the current situation is. The chair directed that that supplementary budget allowance be made, in the event that the committee may wish to bring in witnesses, to be placed before the board as soon as possible.

Mr Polsinelli: This document was just distributed to us today from the research officer, but a preliminary glance indicates that there are a number of interesting situations happening in certain places in North America, particularly what is happening in one of our sister provinces, British Columbia. It would indicate that it was one of the first two provinces in Canada to establish a commercial arbitration centre together with some type of a victim-offender reconciliation program together with other similar programs.

I also note that in California, according to our researcher's document, they are at the forefront in a rent-a-judge program. They also have some very sophisticated community neighbourhood justice centres, notably in San Francisco.

With the concurrence of the committee, I thought that it would be interesting, in terms of our looking at the whole alternative dispute resolution mechanisms, to examine the situation in other jurisdictions. Since these two particular jurisdictions, one in Canada and one on the west coast of the United States, have had some experience in this area, perhaps if we had the concurrence of the committee we could submit to the Board of Internal Economy a supplementary budget to visit these areas some time in February 1990 to see what those jurisdictions are doing.

Mr McGuinty: Mr Polsinelli says it would be interesting. I think it would be indispensable. I am surprised that they are so flagrant with their reference to rent-a-judge. I know that it does take place in the southern United States, but I did not think that they admitted it in such a flagrant way. A friend of mine has a rent-a-kid business in which he rents kids for the purpose of election campaign literature.

Mr Kanter: Does he have any of your kids?

Mr McGuinty: Yes, as a matter of fact. I endorse Mr Polsinelli's views. I think it would be interesting to see how our American cousins operate, especially in February, because I think that this rent-a-judge program is particularly active at that time of the year—Vancouver likewise. My son and daughter who are living in Surrey tell me that there is a interesting setup there as well.

The Chair: If I may just make a comment or two. Sorry, Mr Smith.

Mr D. W. Smith: I presume I must have missed something here. I thought you were talking about bringing delegates from those places.

The Chair: This is an alternative suggestion that I am hearing from Mr Polsinelli and Mr McGuinty. This is a proposal premised on the fact that the Board of Internal Economy might be disinclined to permit travel, which I understand amounts to $20,000 for a committee to make a reasonable trip, exclusive of the cost of transcripts.

I had a discussion with the researcher for the committee, Ms Swift, who indicated that from her research, all the jurisdictions which are referred to here would have very useful information to impart to the committee. The thought is that it would be protecting the public purse to bring the experts from all these jurisdictions, including some from Ontario, to us at less cost than if we travelled to one or two of these jurisdictions.

We could make a submission to the Board of Internal Economy in the alternative, which may include travel to one or two of the jurisdictions, with costs for witnesses from other jurisdictions to come here.

Miss Nicholas: I still have a comment. I want to put on the record that I was not here when we initially started our whole sequence of dealing with alternative dispute mechanisms. I remember this report when it was printed. I was working with the Donner Foundation. It was done in conjunction with another report. I found it fascinating. I know the chairman is more involved with it and I know there has been allusion to us dealing with it. I am not sure what our mandate is to deal with it. I am not sure we will be given the time and sit and hear it. Is this going to supersede other committees?

Assuming that we are going to give the time to deal with it–I know this is just a bottom-line figure–I assume that someone has taken the number of people and where they are coming from. Having said that, I am concerned whether, if a witness is going to come and bring a brief that he will read into the record, that is going to be of any value to us. Mailing it in and assuring that we read it might be a more valuable alternative.

I have never seen a rent-a-judge situation. I have been in a courtroom. I know that there is some reluctance to consider that kind of situation in Ontario, although a lot of people feel that it would be more expeditious and that it would be valuable. There are all these things being thrown around. I have never seen it in practice.

I am concerned if I do not actually see it, wherever it be I have to go, Ottawa, I do not care. If it is going on somewhere, I would like to see it in action. It has to be proved to me that a witness is going to be of some value here. If it is someone who is going to impart some practical implications or practical reasoning for alternative dispute resolution mechanisms and variations, then I might consider having that person come here and listen.

The concern I have, and I respect the researcher's position on this, is that if people are only going to come here and read a brief that they could otherwise send, then I am very reluctant to pass such a budgetary motion. But I think that dealing with this is a great idea if we have got the mandate, and you would know that better than I.

1700

The Chair: Basically, if I could address that issue first, next Tuesday, and I believe the two subsequent days, we will be receiving overviews from experts in this particular area. The committee itself then will define the extent of its hearings and its mandate.

The bind we are in at the present time is that we are required to make known our budgetary requirements by next Monday. So what we really are doing is making a provision for budget which may or may not be used and we are trying to anticipate the budgetary requirement. It will be for travel and/or the cost of bringing expert witnesses in. The reason this is on the agenda today is so that we can deal with the types of questions you are raising.

I do know that other committees have brought in experts from other jurisdictions and in addition to the presentation, the cross-examination and questioning from members of the committee have proved very instructive to committee members. Presumably we can do that with some or all of our witnesses, or we can do some travelling.

Mr Kanter: At the risk of making myself very unpopular with my fellow committee members, I would tend to support the proposal we have before us to bring people here. I think for $9,000 we can get a lot more information than the same amount of money would purchase for us in terms of travel.

My experience with the Ontario Automobile Insurance Board is that we brought people in from some of the western provinces, from Manitoba and British Columbia, I believe, we cross-examined them and it was a very useful exercise. I would support, albeit reluctantly but with a view to costs and benefits, the proposal to bring people here rather than travel ourselves.

Mr Polsinelli: I think that if we undertake this initiative, the first initiative on the part of the committee to send a meaningful report to the assembly, then we should do whatever we can to gain as much personal experience and information as possible.

I move that the clerk of the committee be instructed to prepare a supplementary budget to deliver to the Board of Internal Economy, including the fees associated with bringing a series of witnesses to the committee together with the costs associated with bringing the committee to the West Coast Mediation Centre in Victoria, BC and any other locations that may be of interest to our researcher and to California to investigate the rent-a-judge program under family divorce dispute resolution processes.

The Chair: Are there any questions or comments on Mr Polsinelli's motion?

Mr McGuinty: Very clear.

The Chair: I just ask, being not well versed in terms of experience with the dealings of the Board of Internal Economy, on a point of clarification, would it look at this particular request and exercise any discretion in terms of granting part of the request as opposed to all?

Mr Polsinelli: Once the committee has passed this motion, if it does so, it would be your obligation to attend the board meeting and defend the motion.

Miss Nicholas: They may take a portion of it and in my personal experience, they have done that in the past. But if a well-thought-out, well-argued position is made that this is an important matter that needs thorough consideration, then they might in their infinite wisdom agree with our motion.

Mr Kanter: Mr Polsinelli, could I ask you to repeat your motion?

Mr Polsinelli: I don't have it written down.

Mr Kanter: What is the sense of it?

Mr Polsinelli: The sense of it is that we bring in whatever witnesses we deem to be required, and from the document I have before me prepared by the researcher, the two most interesting places would be the one situated in our sister province of British Columbia and the other one in California, so essentially that we go where they have these mechanisms in place to see them work in a sort of daily fashion.

Mr Kanter: So you are saying that the committee should travel to British Colombia and California and call witnesses from other jurisdictions?

Mr Polsinelli: Exactly.

The Chair: To be more instructive to the clerk in preparing that budget, what we are saying basically is that from the budget proposed here today, we in effect delete the witness requirement, to bring witnesses here from British Columbia and California, and that we add to the budget the travel expenses for the committee to go to British Columbia and California to deal with the issues outlined in this report.

Mr D. W. Smith: How many dollars would Mr Polsinelli be roughly talking about? Over $20,000, I heard.

The Chair: I gather that you are probably looking at between $40,000 and $50,000 all-inclusive.

Interjections: No.

Mr Polsinelli: I would ask the committee to consider what the effect on the province of Ontario would be.

The Chair: That is if you are talking about travelling to British Columbia and California plus the witnesses that we are still inviting here from the jurisdictions that we do not travel to. I will ask somebody else for a ballpark figure.

Miss Nicholas: I would suggest $25,000.

Mr Kanter: I put my money on the chair.

Mr D. W. Smith: The tickets will be $1,000 each.

The Chair: In any case, the general instruction to the clerk is to prepare budgets for that particular mandate–

Mr D. W. Smith: We have not voted yet.

The Chair: –if the motion is carried. The number will be presented as calculated to the Board of Internal Economy, and I will argue the case on your behalf to the best of my ability.

Mr Kanter: Are we going to vote on this motion?

The Chair: We are going to vote on it. If there are no further questions or comments, I will put the question at the present time. All those in favour of Mr Polsinelli's motion? All those opposed?

Motion agreed to.

Mr Kanter: Could we note that was not carried unanimously or something to that effect?

The Chair: Shall we have a recorded vote? Okay.

Mr McGuinty: I think the record should also show that there was displeasure expressed from the gallery at the idea of travelling expenses.

The Chair: The vote already having been taken, I think the record should indicate that Mr Kanter was opposed to the motion.

The proceedings for today's session of the justice committee are hereby adjourned.

The committee adjourned at 1708.

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McClelland, Carman (Brampton North L)
McGuinty, Dalton J. (Ottawa South L)
Nicholas, Cindy (Scarborough Centre L)
Runciman, Robert W. (Leeds-Grenville PC)
Smith, David W. (Lambton L)
Sterling, Norman W. (Carleton PC)

Substitution:
McGuigan, James F. (Essex-Kent L) for Mr McClelland

Clerk: Arnott, Douglas

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Baldwin, Elizabeth, Legislative Counsel
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Witnesses:

From the Management Board of Cabinet:
Elston, Hon Murray J., Chairman of the Management Board of Cabinet and Minister of Financial Institutions (Bruce L)

From the Association of Canadian Archivists:
Hopkins, Mark, Committee on Access and Privacy

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Standing Committee on Administration of Justice

Gun Replica Sale Prohibition Act, 1989

Organization

Second Session, 34th Parliament

Monday 11 December 1989

Monday 18 December 1989

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Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 11 December 1989

The committee met at 1555 in room 228.

GUN REPLICA SALE PROHIBITION ACT, 1989 (continued)

Consideration of Bill 145, An Act to prohibit the Sale of Gun Replicas.

The Chair: I would like to convene this meeting. In view of the fact that this is the only day that we have slated for this particular bill, which means that we have to complete clause-by-clause today hopefully, the submissions will have to be wound up at around 5 pm, which leaves something like 15 minutes per submission. I guess we can play with that a bit if we have to, but I think it is important that we get the committee under way, notwithstanding the fact that there are a few members missing here.

I will ask the first group, Joe Survival Adventure, to come forward. Glenn Logie is president. I would ask Mr Logie to please identify himself at the table for purposes of the record.

JOE SURVIVAL ADVENTURE

Mr Logie: I am Glenn Logie. I am the president of Joe Survival Adventure and Live Fire Tactical Training Systems in London, Ontario.

The Chair: Thank you. If you would try to leave a few minutes towards the end of your 15-minute time slot in order to permit committee members to ask their questions, it would be appreciated.

Mr Logie: That is fine. I believe everybody has been issued with a copy of my brief.

The Chair: I understand they have, yes.

Mr Logie: I will try to be brief. What I have done in this brief is, first of all, look at Bill 145. Bill 145 on my presentation is in bold print; my rebuttals and solutions, if any, are in standard print. If you do not mind, I will start now. What I will do is read the section of the bill and then go into it so that everybody is familiar with the information at hand.

The explanatory note to Bill 145 is:

"The purpose of the bill is to prohibit the sale of replicas of guns that might reasonably be mistaken for real guns in the commission of a crime."

My rebuttal to that is: A criminal who intends to commit a crime has little regard for the legality of the weapon used for the commission of the crime. They really do not worry too much about whether it is stolen or whatever. Most armed robberies in Ontario that I have been able to find out about are committed with knives and bludgeons. The sale of real illegal firearms to criminals is a more serious problem than the use of nonfiring replica firearms.

Increased penalties for the commission of armed robbery or other like offences is the answer, not treating collectors, enthusiasts, etc, as criminals. We are all being tarred with the same brush. It is time for politicians to quit treating the general population as children and allow us the ability to make our own decisions, our own choices and policies. As a small note on that, we have self-policed our organization since its inception in 1983. It is an unfortunate state of affairs when the collection and personal enjoyment of mere replicas of famous firearms is treated by the media and politicians as a criminal activity.

Section 1 of the bill states:

"In this act, 'gun replica' means a toy gun or other object that is not a firearm as defined in the Criminal Code (Canada) but that closely resembles or might reasonably be mistaken for such a firearm," and I go on to explain the other definitions in the bill. For example, "'toy gun' means a gun designed for amusement or diversion rather than practical use."

In Arva, Ontario, approximately five years ago a robber held up the bank with a can opener in his jacket pocket. It was mistaken for a firearm. Shall we ban can openers? Are they gun replicas? It is a little vague. The majority of armed robberies are committed with knives or bludgeons. Shall we ban the sale of utility knives, pipe and baseball bats?

Will this include marking pistols, Nintendo-style computer guns, squirt guns, pellet pistols or rifles that are powered by air or CO^2, starter pistols and games of amusement, where such items are used at the CNE, Canada's Wonderland, etc? Will this be the first step in banning

regular firearms used for target shooting, skeet shooting or other sport purposes?

Section 2 of the bill reads:

"(1) No person shall sell a gun replica or offer a gun replica for sale.

"(2) No person shall sell or offer for sale a toy gun that is not a gun replica unless the minister has issued a certificate of approval in respect of it."

This section is too vague and too broadly based to be applicable. Under this bill, all toy guns are replicas and vice versa; therefore nothing could be sold. Who defines? Who decides? What about the interest of legitimate collectors and enthusiasts? We are all being treated as criminals, guilty until proved innocent. This section is catch-22 at its finest.

Section 3:

"(1) A person wishing to sell a toy gun or offer a toy gun for sale may apply to the minister for a certificate of approval.

"(2) The application shall be in the form provided by the minister and shall include the fee set by the minister and such other information concerning the design of the toy gun, including a model of it, as the minister may require.

"(3) If the minister believes on reasonable grounds that the toy gun is not a gun replica, the minister shall issue a certificate in respect of it.

"(4) If the minister believes on reasonable grounds that the toy gun is a gun replica, the minister shall notify the applicant of his or her refusal and the reasons therefor.

"(5) A certificate of approval issued in respect of a toy gun is effective in respect of all toy guns produced by its manufacturer and having the same design."

Here is my rebuttal, first on section 1, which is catch-22 once again: Being a toy gun puts it in the act under section 1, another fine example of an Orwellian term called doublespeak.

Section 2: Another expensive paper shuffle by the government, leading to increased unit cost, but why worry? Under section 1, toy guns are banned.

Sections 3 and 4: Again, who decides? The reason that certain firearms are so famous or so familiar to the public is because of their simple ergonomic design. Basically, ergonomic, for those who do not understand that term, is the structure of the way it works for the muscles of your hand.

The reason some firearms look the way they do is that that is the most functional layout the designers could develop. Similarities are no coincidence. Even a squirt-gun requires a grip and trigger layout similar to a real gun. It is just the only way that it will work. It is merely the best design for your hand. Will these design similarities, through the attempt at creating a functional toy or similar device, be misrepresented as replicas?

Again, section 5: Who decides? Will the government supply experienced people to make judgements or hire private experts who may have a bias towards the manufacturer or vendor?

Section 4 of the bill reads:

"(1) Every person is guilty of an offence if the person,

"(a) contravenes subsection 2(1) or (2);

"(b) provides the minister with false information or purposely misleads the minister in an application; or

"(c) falsely claims that a certificate of approval has been issued in respect of a toy gun.

"(2) A person is not guilty of an offence for contravening subsection 2(2) if when the person sold a toy gun or offered a toy gun for sale the person reasonably believed that the minister had issued a certificate of approval."

Who decides what is a toy gun or a replica? In Japan, private ownership of regular firearms is almost totally prohibited. Not only are firearms tightly regulated by the Japanese government, but most regular air guns also fall under the same harsh restrictions. But the Japanese allow the collection and possession of replica firearms with no restrictions. They are also the world's major manufacturer and exporter of replicas. Considering their severe restrictions on regular firearms, their lack of concern towards replicas shows a realistic appraisal of the replica's threat to society in Japan. The author of this bill could learn valuable lessons from the Japanese.

Section 5 reads:

"(1) Every person who is guilty of an offence under this act is liable on conviction to a fine of not less than $100 and not more than $200 for a first offence and $500 for each subsequent offence.

"(2) If the person is a corporation, the minimum fine is $500 and the maximum fines are $1,000 for a first offence and $5,000 for a second offence and not as provided in subsection (1)."

Once again, who decides? This bill is too vague and is an infringement of the personal rights of law-abiding citizens who are heaped into the same bin as criminals. The antigun hysteria that is sweeping North America has perceived those people who collect regular firearms or replicas as a criminal element. The enjoyment and interest collecting, displaying,

etc, that a safe nonfiring replica gives to the owner should not be tarnished or tainted, nor should the government impose a sweeping policy on the innocent because of its failure in controlling the guilty. We need stronger and more binding laws for the guilty, not restrictive laws for the innocent.

The second section of my brief deals with general observations that we have made of the implications of this bill. In this section, I will make general observations relating to the reasons for and implications of Bill 145.

In reviewing Bill 145, the main theme attempts to affix blame on replica firearms or similar toys in the commission of a crime. Upon closer study of criminal actions, eg, armed robbery, that have occurred, especially in and around Metropolitan Toronto, the vast majority were committed with knives, bludgeons or a combination of the two. A bludgeon is a small object such as a piece of pipe full of lead, etc.

Replicas made up a minute percentage; in fact, more real firearms were used than replicas. Of these real guns, many were obtained illegally through theft or importation. When I say importation, I mean illegal importation. Since the ban of replica firearms in Toronto, Metro's crime rate has increased. The replica ban has not worked, but replicas were never the problem. Criminals are the problem.

With no disrespect intended, the author of this bill has little or no knowledge of the subject matter in this document, replicas in general or their uses to various organizations, especially to the legitimate rights of safety-minded collectors and enthusiasts, whose only crime is the interest and historic value firearms bring.

It was said recently on a local news show, and I believe it was CITY-TV, by the author of the bill that one of the reasons for this document's passage is to remove the mental gymnastics the police officer would go through in determining whether the gun aimed at him is real. The officer would go through mental gymnastics, to be sure, thinking: "If I fire, will I be charged? Will I lose my job? Is the person aiming a gun at me a member of a minority? Will I have my picture plastered all over the television or newspaper?" Who would blame an officer for being gun-shy?

Allow the police to do their job. Point a gun–any gun–use a knife or threaten an officer with bodily harm and you become a criminal. Give the ability to enforce the law back to those entrusted with it, and that includes protecting themselves. Are those officers who appeared at this committee concerned with replicas or the consequence of media aftermath from a self-defence situation?

1610

This bill would punish the law-abiding legitimate collectors, enthusiasts and other users in a vain attempt to control supplies to criminals. A parallel situation would be where alcohol is served at or sold by hundreds of locations throughout Ontario. Abuse of alcohol resulting in violence or death is a daily occurrence. Driving while intoxicated results in hundreds of deaths every year, yet wine, beer and liquor are still readily available.

If a similar law were introduced, alcohol would be banned from sale. Businesses would close. People would be out of work and innocent, responsible consumers would suffer for the mistakes and stupidity of a comparative few. No, alcohol is not banned. The guilty are punished. The laws regarding impaired driving have been increased and enforced. So why treat replicas and law-abiding purchasers of replicas as criminal elements? Instead, increase the penalties for the committing of crime. People commit crime, not replicas.

How this will affect our business? You will hear today different versions of different styles of our business, but these are just our personal effects.

The Chair: Excuse me. I would just caution you to keep one eye on the clock. Of the 15 minutes allotted, there are about two minutes left.

Mr Logie: I can go like in the movies.

As a user and manufacturer of replicas, this bill directly affects the ability of our company to generate income. We use replicas as base material for the type of marking guns that are incorporated into our business.

Reasons for the use of replicas: They are premachined and the unit cost is reduced. The unit is cast of a soft metal, a zinc alloy. This material is easily machined and not affected by the elements. The material is good for this type of rebuild as it is not able to withstand the pressure of powder-fired cartridges or live-fire cartridges. Loading and firing systems are dedicated and they are unalterable. Our equipment is registered and recorded in our files with the name, address, etc, of the purchaser.

Other reasons for the use of replicas: Being made with the same handling features found in real firearms, such as point of aim, safety position and familiarity of controls, make these units perfect for training or indoor use.

Banning the sale of replica firearms will leave a void in the consumer market and will affect the income of vendors such as our company. Many types of marking guns use design characteristics similar in appearance to actual firearms. The vague structure of this bill will directly affect an area of sports and training equipment through lack of knowledge about these systems.

Included are a series of diagrams or photos showing various marking-gun equipment with similar firearms. With some units, design similarities are intentional to produce the same handling characteristics. With other units, design features are unintentionally similar, as this is ergonomically the best layout to have for optimum results.

I urge you to study the observations enclosed. Do not push this bill until all ramifications are fully understood. We need stronger, more binding laws for the guilty, not more restrictive laws for the innocent. I thank you for your time.

Mr Farnan: I just have a comment. The question was asked by the delegation, "Are those officers who appeared at this commission concerned with replicas or the consequence of media aftermath from a self-defence situation?" Yes, they are. The presentations of the various police commissions were extraordinarily powerful and quite unanimous in that they were very concerned.

Mr Logie: May I answer him?

The Chair: Certainly.

Mr Logie: I have talked to many police officers on a personal basis. We use police officers on our field and they use our equipment for training. Actually, 60 different police departments across North America use our equipment. The officers themselves categorically said that the major fear they had was of repercussions through the media or otherwise. They want their jobs. They are like us. They do not want to be affected.

The Chair: Thank you, Mr Logie. Miss Nicholas, you had a comment or a question, quickly.

Miss Nicholas: My first comment would be that I think other presenters were given a half-hour. I think that, given that the clerk has indicated to us that there might be some time next Monday, maybe we should consider putting clause-by-clause over to next Monday so that the presenters who have come from London and various other parts might be able to fully present. In any event, they might be able to present in less than 15 minutes. That is just my comment. I did not get it in earlier and I was waving to make that comment.

Mr McGuinty: I support that.

Miss Nicholas: My quick question then–there is time. If there was not time, I would think differently because we are pressed for time until we adjourn, but given that there is some time now, I think it appropriate that we try to accommodate presenters.

In terms of the guns we have before us that you use, and I am looking at the section that will allow some kind of–I have asked many, many questions on this. How do we decide what is a replica and what will be allowed under this act? What is a replica gun and what is not? One man brought us a green fluorescent gun and he told me that was not. I have difficulty with this person who is going to make the decision on what is a replica and what is not.

Having said that, would you be prepared, in any way, to change your guns, not in terms of the way they look, but by putting markings on them or in some way making them look like what I would call a replica gun? I do not know what you would do to them. I see the ones with the red fluorescence on them, with different markings on them that would clearly identify them as replica guns as opposed to real guns because of the markings.

Mr Farnan has told us that most of these markings are removable, the little red cap on the end or on the side. But would you be prepared or would it be a feasible alternative in your business to do something to the guns so that from a distance someone would be able to identify this as a replica as opposed to a real gun? Would you entertain that at all?

Mr Logie: It would be very difficult at the best of times. Several of the pieces of equipment which fire a round and are used for marking are designed to be used in an area of concealment. A fluorescent piece of equipment would, first of all, stand out.

Second, those who would deface the piece of equipment and remove it have very little regard for the legality of removing it or the fact that it is on there. They would change the look anyway and they would do that with a legally obtained piece of equipment or an illegally obtained piece of equipment from another province or from the United States. They would do that anyway.

If the replica itself it to be used in the commission of a crime, they have very little concern as to whether this thing follows specifications. They will convert it to look like it anyway. The legality of the item is of very little

interest to them. They will change it anyway, and whatever you put into that, there are ways around it, with removal by painting over or with filing or sanding, etc. They will remove that item if they so desire. If they acquire the items illegally through another area because they have been banned here, it is not going to stop the crime.

The Chair: It appears as though the members of the committee have expressed the desire to permit each group a half-hour. If in fact we do that, which seems to be the wish of the committee, at some subsequent time we will have to reschedule the clause-by-clause of the bill.

Mr Farnan: My understanding was it would be next Monday.

The Chair: We have not made any decision to that effect at all as a committee. It is quite possible that it could be next Monday, but I do not think we have made that decision. But what I am suggesting we do is perhaps take half an hour for each of the groups today and leave maybe 10 minutes at the end of today's session to talk about committee business.

Is there a consensus to do that? There seems to be unanimous agreement to do that. So next on our agenda are Mr McGuinty and then Mr Runciman.

Mr McGuinty: First of all, I commend your decision regarding deferring our clause-by-clause. We have guests, people here who have travelled at some expense in terms of time and otherwise. They have suffered the impoliteness of waiting 40 minutes for us to show, and I commend you for taking that into account.

1620

Mr Logie, I commend you for your very thoughtful presentation. You have gone about it, I think, in a very effective way. You have taken clauses and then you have commented on them. But there are a number of questions I would pose, to clear up a few points of confusion in my mind.

On three occasions you state that most armed robberies are committed with knives or bludgeons and ask whether we should therefore ban the sale of utility knives, pipe lengths and baseball bats. Again, on page 5, you say, "the vast majority were committed with knives, bludgeons or a combination of the two." What is your evidence for that?

Mr Logie: I did a little bit of library work, read recent newspaper articles, did a study of CITY-TV, CKCO-TV, etc.

Mr McGuinty: Do you think that police research would agree with that?

Mr Logie: I would think so, yes. You will find that most criminals, especially petty thieves, will decide to use an item such as a knife or bludgeon because it draws a lesser fine when they finally plea-bargain.

Mr McGuinty: Sure. On page 3, I think you make a comment here under (5) which does your otherwise moderate presentation a disservice. You say: "Who decides? Will the government supply experienced people to make judgements or hire private experts who may have bias towards the manufacturer or vendor?" Is that a rhetorical question? What do you think the government would do?

Mr Logie: From past studies of what the government generally does–

Mr McGuinty: Past studies of what the government does?

Mr Logie: Oh, just from personal observations of government programs. I am not saying this government itself, but other governments have tended to lean towards friends of members. I am not saying that would happen here. It may happen. I am just saying, "Who decides?" How many in this government or how many people you know are sufficiently expert in replica firearms and/or toys, in the manufacture of either, that they can make a decision like that?

Mr McGuinty: Sure. I am partly confused and partly resentful of that kind of unfounded allegation which I think, as I have said, does your otherwise moderate and thoughtful presentation a disservice.

On page 4, you refer to "the antigun hysteria that is sweeping North America." In the House today, I gave a statement that indicates that anyone in Ontario can complete a firearm acquisition certificate statement by answering two basic questions: (1) "Have you been charged or convicted of a criminal offence during the past five years?" (2) "Have you been treated for a mental illness during the past five years?" The former can be confirmed very easily by punching into the police computer network, but medical files are confidential and the police are limited to the response of the applicant.

I come from a small town east of Ajax that is called Ottawa. In the past five years, we have had 6,768 certificates approved and less than one per cent of applications rejected. My friends in the Ottawa Police Force tell me that they have an average of two to five gun calls per day, that is, situations where guns or rather convincing replicas of guns are displayed.

In Ontario, in three years, from 1986 to 1988, 150,000 certificates were approved. I find, to my

absolute, utter amazement, that since the beginning of this gun acquisition certification program, we have had one million issued in Ontario and we have no means of cross-referencing. Somebody can get a gun here and apply for another acquisition certificate in Toronto, Pembroke or my hometown of Osceola and build up an arsenal. Then the guns that they do receive from these certificates can be upgraded to perform service far in excess. So I am not sure it is quite appropriate to refer to an antigun hysteria.

You say people commit crime, not replicas. That sounds like the American Rifle Association that says: "Guns don't kill people. People kill people."

Mr Logie: Correct.

Mr McGuinty: To that kind of crap I would reply, people kill people with guns and people commit crime with replicas. We had a policeman in here the other day with 28 years' service–and I can point to companions in policemen; I have had some police experience myself–and we had an array of replicas on that desk where you are sitting. This man could not determine without fondling the weapons which were the replicas and which were the real things.

Also, I think you do yourself a disservice when you ask–somewhere in here there is a statement –are the police more concerned with follow-up embarrassment, so to speak, or are they concerned with the real problem? You say, "Are those officers who appeared at this committee concerned with replicas or the consequence of media aftermath from a self-defence situation?"

There was an OPP inspector here the other day and I think, out of all the hearing, of all the material, all the material in the bill and all the briefs, he said it as best can be said: gun replicas serve no useful purpose in our society.

The Chair: On that note, Mr McGuinty, we only have about a minute and a half left.

Mr McGuinty: I could use that up, if you want.

The Chair: I think Mr Runciman wanted to either make a comment or ask a question. We have extended this time period by 15 minutes so we would like to thank you very much, Mr McGuinty, for your intervention.

Mr Runciman: I share some of the witness's concerns in respect to the police forces and individual police officers across the province and their concerns about treatment of various groups in society, etc. But at the same time I have some difficulty with your suggestion here today that that is their primary concern. I think, if indeed it was, the witnesses who appeared before the committee would have made that clear. It is difficult–I think you can appreciate our situation –to have those kinds of witnesses appear before us with very strongly worded and deeply felt testimony in respect to the decisions that they have to make on a split-second basis.

I appreciate what you have said in respect to being in business and these kinds of pieces of equipment being critical to your business operations. Perhaps there is some way that could be addressed in the legislation in its final form. Perhaps those kinds of establishments themselves could be licensed and parks for that kind of purpose could be licensed so that if this kind of legislation does get third reading and royal assent, you do not find yourself out of work. I can appreciate that and I can sympathize with it.

Did you supply this brass eagle?

Mr Logie: No, that is not myself.

Mr Runciman: I found some of that quite interesting. It seems to me, just looking at some of the equipment here, that perhaps those kinds of replicas, if that is what you want to call them, could be convertible to become actual weapons. They certainly strike me as having that potential.

Mr Logie: Not possible.

Mr Runciman: It is not possible? Okay. That is all I had to say.

The Chair: I think we are just about out of time with this particular–

Mr Farnan: Mr Chairman, I did want to have an opportunity to make a comment for the record. My understanding, when I asked a question, was that you had already set a time limit. You changed that time limit and, as the member of the official opposition here, I would like a certain amount of time to address this delegation. I think that would be a fair–

The Chair: Excuse me, what do you mean by "time to address this delegation"?

Mr Farnan: I have a comment to make. We had a very brief exchange and it was terminated on the basis that you were ruling that the delegation's time had ended. I would like to just complete that. It will be very brief.

The Chair: Okay. Proceed, Mr Farnan.

1630

Mr Farnan: Thank you. It was our exchange concerning your experience with individual police officers. I think the record should show, from today, that the leadership of the police associations that came before us–I am not going

to quote from all of them, but the Ontario Provincial Police Association, for example, concludes, "On behalf of 4,500 members of the Ontario Provincial Police I urge you prohibit the sale of replica guns as proposed in Bill 145."

In terms of the Municipal Police Authorities across the province, it concluded its brief by saying, "Police governing authorities in Ontario have demonstrated overwhelming support for this bill and we encourage the standing committee on administration of justice to provide unanimous support and push for third reading."

Be that as it may, I can identify with the concern. You are talking about real replicas.

Mr Logie: I am talking about replicas. The way this bill is written it is so vague that, as I have issued at the back of this brief with the pictorial illustrations, through no fault of their own, the design similarities of some marking equipment for our style of game is going to be lotted in with the replicas. It is not the fact we design them to look that way. In some instances we did to help with officer training or whatever.

Mr Farnan: I suppose the problem that I have, and probably it is a matter of reaching an accommodation or understanding–I do believe that the people who have the greatest regard for guns are gun collectors and people who are involved in rifle clubs, etc–their understanding and their concern of the dangers, etc. What are the accommodations that can be made for these legitimate collectors?

This has to be done in conjunction with protection of society and that is, I think, the task of the committee, to find out what these accommodations can be. I do not think I see it as a totally confrontational approach between where you are at and where I am at individually, as the mover of this bill, but I do believe that you should also recognize the dangers in society. Your statistics in terms of the replica firearms, I think, are correct in that they form a smaller percentage. The Metropolitan Toronto Police talk about 20 per cent. But I think what needs to be done is not to walk away from the problem, but to find out where the accommodations can be reached.

The Chair: Thank you very much, Mr Farnan. On that note, I will thank Mr Logie for his submission and sharing his comments with us. I will ask the next presenter to come forward, please. I believe it is Jeff Medwid, president of Got-ya Survival Adventure.

GOT-YA SURVIVAL ADVENTURE

Mr Medwid: My name is Jeff Medwid. I am the president of Got-ya, the survival adventure down in Windsor.

The Chair: Mr Medwid, if you were to sit down, I think the microphone would pick up your voice a little bit better.

Mr Medwid: My name is Jeff Medwid. I am the president of Got-ya, the survival adventure game in Windsor. I will be quite brief. I agree with a lot of the statements my friend Glenn Logie has made. I will not recap them in any way.

But on another note, I would like to present again the concerns of a new industry, an up-and-coming sport that could be threatened by this bill and, again, the vagueness of this bill. I think we have touched upon it. What I would like to do at this point is elaborate a little more on the benefits or the positive aspects of the game of survival games and where the gun replicas that we have identified as a toy or that could fall under this aspect of this bill could endanger or hinder the game of survival games in themselves.

I will go back a little bit in time to about three years ago when the survival games themselves were generally new or still up and coming and, in the public's eye, very misunderstood. We have come a long way since then. When I first played the activity it was on Glenn's field in London. I was very scared and very nervous and not knowing what to expect. But after getting into the game itself, it was not so much the aspect of the gun; it was the challenge, the strategy and a lot of other aspects of the game that made it very–how would I put it–exhilarating. It is a whole new sport, a nonviolent sport, even though it has the tendency to be misinterpreted as a war game.

I watch hockey and am appalled in regard to the conduct of our professionals and the violence that we will sit and watch on our televisions in a prime time situation. So I am very much aware of the concerns we have in regard to this bill. But again, my main concern is how we protect our sport and our industry from being affected by this bill.

In the Windsor area I, myself, have conducted campaigns of charity games, constantly approaching media, constantly approaching local people and residents, making them very much aware that what we have here is not a rebellion or an overthrow of the government as such. On a talk show that I was on on a local radio station, one gentleman voiced the opinion that I was trying to overthrow the government. It was a comical moment, to say the least.

But what we have here is a recreational sport that offers a lot of aspects to a lot of people: our executive levels, our labour levels. I have had a cross-section in the Windsor area of auto workers, obviously, of executives, police officers, media and people along that level who have played this recreational game. Again, my main concern, and I have voiced it on several occasions already, is how we can protect the industry of paintball and where this bill can be adjusted so that we are not hampered or confined by political shuffles that could slow down the process of the growth of the sport.

Again, as was stated, "'Gun replica' means a toy gun or other object that is not a firearm as defined in the Criminal Code (Canada) but that closely resembles or might reasonably be mistaken for such a firearm." Yes, these guns we use, paintball replica guns, can be mistaken. This is very clear. Then we go into another statement, on a toy gun: It means "a gun designed for amusement or diversion." Yes, this is very much amusement; yes, this is very much diversion. But I also feel it is very practical because it does offer a large release of anxiety, say, in a lot of cases.

I have seen many people, first thing in the morning, come out with a Rambo attitude. Here is another problem we have with our television and watching violence: They come out with that kind of attitude. But when they leave at the end of the day, I have watched each and every one of them with a lot more respect in regard to the concept of, maybe, war, or what could be real or what could be fantasy. They are very much exhausted and released of any anxieties they may have come with that morning.

Again, I will not repeat myself, but my main concern–and I am sure a lot of my friends' main concern here–is how this is affecting and how we can prevent this from affecting our industry and a sport that is mostly misunderstood.

Mr Farnan: I have a very brief comment. I think basically you have brought up an area that I certainly was not conscious of when I looked at this legislation. I do not know how it would affect my thinking on it, but I am very pleased with the way you have approached the issue. I think what you are saying is: How can we address this issue, bearing in mind your particular business? I do not know how that can be done, and I think the committee has some work ahead of it in which to examine the merits of what we hear today and in the past.

1640

But I think that is the right approach and it is a good direction for the committee to take: to examine what legitimate uses there are. I am not sure at this stage whether what you have described to me is what the committee, as a group–because it would be a consensus decision–will consider a legitimate use. But certainly there is no doubt in my mind there are legitimate uses and I like the way you made your presentation. I think you put it in the most constructive way possible.

Miss Nicholas: I did not realize this all went on with men. I have always supported entrepreneurship and I think I was really excited when we had additional presenters today from what I would consider the opposition to the bill. However, having said that and voicing my support for entrepreneurship at its best, this is very scary stuff for me.

Mr Medwid: How is that?

Miss Nicholas: As you said, a lot of people have this Rambo idea when they come and I was pleased to hear that when they leave their attitude has changed. But perhaps we are mimicking a wartime situation, which I have always thought of as a thing we should dread. I would like to know what kind of sport–I can see that perhaps your reaction, the reaction time or movement time, but what is the sport value in this?

Mr Medwid: Well, what is the sport value in any competition? That is what I would have to readdress you with. There is obviously a goal, an objective. There is obviously a strategy, a physical ability that would allow you to succeed in any sport. It is a different sport; it is a new sport. Maybe not so new, it has been around–I stand to be corrected–more than eight years. In Canada it has not been known for more than about five to six years.

If we can get back into the basic structure of the sport or how it originated, it began with what was called the marking device. Originally the marking device was used for forestry and cattle. I believe, from the reading that I did, a couple of individuals came up with: "Well, this looks like fun. How do we put our wits, our skills, against each other?" Let's take as an example: Let's look at marksmanship, which is in the Olympics, even. I forget the actual sport this applies under where marksmanship is worth a medal. Here we have one aspect to a sport.

How do we approach the objective, which is to capture an opponent's flag? Or, in terms of a hockey game, how do we approach the objective, which is to take a little puck and shoot it into the other net, regardless of how vicious we can be on the rink? For ourselves, there is never, ever physical contact, except for a marking device or a

paintball, as it is called, which will tag and mark an opponent out. There is your physical contact within this sport.

Up and above that, we now have to use strategy: strategy on how to obtain this flag. How do we get to this flag? There are several ways, and it becomes very obvious, if you have or had the opportunity to watch the game, that a team that comes in with no strategy will lose. That is very commonplace: Any team that comes in with no strategy will, of course, lose. You cannot go in there with a shoot-'em-up attitude. That is just not the game. I guess it would go back to educating a little more and again coming down to the recognition that it is a true sport and there is serious growth within the sport as a nonviolent, noncontact sport.

I have videotapes that I record for the participants so that they can view themselves at a later date and truly have some good laughs. But there is a true sport element here. There is a strong competition element. There are major tournaments in the United States and Canada, I believe. One that was just held recently, not a major tournament but a local tournament, I believe it was Flag Swipe Inc, had a very successful game. I believe there was even a write-up in the November issue of Action Pursuit Games magazine, which you are holding in your hand. But I think my main concern is more along the line of recognition of the sport and how we protect this sport from this particular bill.

Mr McGuinty: I think what you have said is a very valid concern, Mr Medwid, and Mr Logie only refers to this under "Personal Implications." He states up front, "As a user, manufacturer of replicas, this bill directly affects the ability for our company to generate income." That is exactly the way it should be put and without apology. It has implications for the sport that you endorse and speak about in very convincing terms, I think. I have never had any personal experience with the game, but it fascinates me.

Mr Medwid: It is a lot of fun.

Mr McGuinty: One of my sons is extremely interested in it. He is a criminal lawyer, he gets a great kick out of it and relates to me in very enthusiastic terms the things that you enumerated. It is a release for him. It requires planning, strategy, activity, is a physical challenge and he finds it very exhilarating. I think it would be very, very unfortunate if, as a fallout consequence of this bill, that which is a legitimate and, I think, refreshing form of recreation for a significant number of people in Ontario suffered.

When I was speaking with the Ottawa police about the other business of their concern about gun control, they were just speculating about how it would be feasible for the, say, 100,000 guns in the Ottawa area, if they are not in the collections of collectors but are used for hunting, to be deposited in a safe place between usage. The answer to that question is that it is not possible; it is on too large a scale. But surely in your activity you have your weapons, I presume. Do the people who participate own their own weapons?

Mr Medwid: There are several who do.

Mr McGuinty: Would it be feasible to have a kind of control that might allay the concerns of people, including policemen, who are concerned about replicas and have these replicas deposited somewhere in a safe place, so to speak, between your game sessions? That in itself can be construed as a kind of invasion of privacy, an infringement upon a basic right, but it might allay the concerns of people who are concerned about this bill. Is that kind of control feasible?

Mr Medwid: I think you already answered the question for me. You said that it is an infringement, period. You are asking a proper human being to do something he should not have to do. How far do you control an individual's life? To elaborate on that a little more, let's take an individual who takes pride in his gun, tuning it up. For myself, I will not allow anything above a particular velocity, say 300 feet per second, for safety reasons. Again, it is very important on my part that I have a safe park or field, as stated. But these people have their own equipment. Even the field equipment requires cleaning, adjusting. They do take personal pride in it and I think you would take away a large aspect of the game—or let's go back to a hockey player or another person who has his own personal equipment, or a skier who would take his skiing equipment home.

Mr McGuinty: I think you have really been very convincing, and on the topic of my criminal son, my criminal lawyer son, he enjoys it so much. I am on your side and I am looking for ways whereby a compromise solution may be reached to allay the concerns. I agree it would be an infringement.

1650

Mr Medwid: With respect to the game and making, say, the general public aware of what this is, I think that is what our goal is. What is this thing this man is holding up against me in an act of crime, say? It would be very difficult, because of the concept of the game itself and the nature of

the equipment that is being used. It propels a paintball where a gun propels, of course, a bullet. So on your overall look of the gun and changing or restricting the way a person can actually handle his gun, are you suggesting, which I would totally disagree with, that people who are collectors and have handguns register the point where the gun is going to be and the point to which they are taking it and there is no diversion of the path?

Mr McGuinty: In concluding, I will simply commend you for your very convincing statement of the validity of the pastime sport of a significant number of people, which we should respect.

Mr D. W. Smith: I was wondering how many people you feel, maybe in Ontario or in your area, do play these games. The only experience I have had with it is through our son, who has played it a bit up around the Grand Bend area and that is about all I know about this war survival game, as I guess we will call it. How many people do participate?

Mr Medwid: First of all, the game is called paintball; just a slight correction, so we will have a common ground. If we are to learn about the game, we wish to use the proper terminology, which is paintball. It is trivial, but to us it is important because it does take away from the survival or war aspect of the game. It is not in any way condoning war; that is not our intent.

In my local area we do what is called a waiver or a form that we sign, which I keep track of. We also use mailing lists. In my short season of eight months we have had over 1,500 people in the Windsor area. There is another field in my area that has done the same volume of people; so I would say within the Essex county area alone we have had already, in this past short season, over 3,000 people, and of course the sport is still growing.

Mr D. W. Smith: Okay. I am going to play a little bit of the devil's advocate here; I somewhat agree with you people because I have grown up with guns all my life and I do not think I have turned out that badly and all the rest of it.

Mr McGuinty: Well–

Mr D. W. Smith: We do not need your comments, Dalton. What do we do if a policeman or policewoman is confronted with these guns, as he or she might be? They cannot really tell the difference in some cases, I guess. I have never been a policeman and I have never been confronted with a gun, but if somebody gets shot, I have to sympathize with the policeman who is doing his duty. People know that he wears a gun. So if someone holds it up, regardless of whether it is a toy or the real thing, how do we defend the policeman? I feel we have to.

Mr Medwid: First of all, I would say that the policeman obviously would have the upper hand in the situation. Anybody who would be foolish enough to point a gun obviously should understand that a gun will be pointed directly back at him. If the person who is doing this act, as you would say, is stupid enough to use a toy against a person who he obviously knows, or we would hope he obviously knows–if he does not, then I think he needs to be taken off the street, because he cannot think straight, first of all–how do we deal with that?

It is an old problem that we always have and always will have. Does everybody think in a logical manner? No. If they did, would we have all the problems that we have facing us today? How do you deal with that? What we cannot do is take away from good people something that has a positive aspect in life. Again, this is my main concern. I know your position in determining how to protect our innocent people, which again is what this is all about. How do we do it and be fair to everybody? It is difficult.

To make a personal point, I would have to say that if a man is foolish enough, or a woman, as it may be, to point a toy gun at an officer, then the officer obviously is within his rights to defend himself, not knowing what the intent of the other person is. If it were a real gun, I believe he would have to do the same thing. I believe from my understanding of a couple of OPP officers who are friends of mine that within their training they are also taught some restraint. I believe in our police force, first of all, and I believe in the discipline that has been taught to them in being careful. They will do what they have to do.

The Chair: Thank you very much, Mr Medwid. I will ask the next presenter to come forward: Richard Morgan, executive vice-president of the Ontario Federation of Anglers and Hunters.

ONTARIO FEDERATION OF ANGLERS AND HUNTERS

Mr Morgan: I have a brief, but if you do not mind, I will hold off handing it out until I am through.

The Chair: That is fine.

Mr Morgan: I appreciate the opportunity to address you and the members of the committee and I thank you for that.

For purposes of the record, my name is Rick Morgan and I have been the full-time executive vice-president of the Ontario Federation of Anglers and Hunters for approximately 14 years. During that time I have had significant involvement with proposed and actual firearms legislation. Three different federal solicitors general have appointed me to the National Advisory Council on Firearms. I have used firearms since I was a boy of less than 10 years old.

The Ontario Federation of Anglers and Hunters is a 62-year-old democratic membership organization with approximately 73,000 individual members and 450 member clubs. Many teach firearms and hunter safety training courses. It was our federation which first introduced hunter safety training classes to Ontario over 30 years ago. Today we remain as partners with your own Ministry of Natural Resources in ensuring this safety program continues its standard of excellence.

Our federation has reviewed the draft of Bill 145 and is pleased to have been given this opportunity to comment. We were surprised somewhat that we had to learn of the bill's existence at third hand and trust that indicates no lack of desire on the committee's part to hear or seriously consider our views. As we are the largest organization in this province dealing with firearms, we cannot help but feel that we should have been directly approached so that we could have reviewed this legislation and got back to you a little earlier. Having said that, we should now deal with the bill itself, and trust you will weigh and consider our comments as carefully as you do others.

Replica guns clearly present no problem by themselves, if your definition does not include any guns which shoot projectiles. The only problem, according to the Hansard of 20 November, is that they are occasionally used by criminals in the commission of a crime.

Many of our members argue that is better than having the criminals use real guns. They believe the victims of the crimes, as well as the police, are safer if criminals are using the less offensive replica. The criminal is of course in the same risk category whichever he uses and he knows that.

You should give this point very serious thought. If you approve this bill or one similar to it, you will put more police and more members of the general public in real danger if even a few of the criminals switch from replicas to the real thing.

Second, by the definition in Bill 145, "'toy gun' means a gun designed for amusement or diversion rather than practical use." I can assure you that the people who choose to collect replicas instead of real firearms find doing so very practical, and they derive amusement or enjoyment from such collections. Their guns can be safely displayed rather than locked away. Further, should their homes be burglarized, the criminals will gain harmless replicas, not real firearms.

Passage of Bill 145 would of course seriously devalue their property, the property of collectors. Being unable to sell their collections or any parts thereof, they would literally have to take them to their graves. Surely the state has no place in the collections of honest citizens.

Third, your proposed legislation may not include air rifles. If that is the case, please be absolutely sure that it does not. Air guns are used by both parents and gun clubs to help train beginning shooters. They are excellent for that purpose, particularly in areas of Ontario where there are few firing ranges.

In addition, air rifles are used in several target shooting disciplines, as well as the Olympic games. One of Canada's most proficient air rifle shooters is from Ontario and as a member of Canada's Olympic team is a personable ambassador of goodwill as he tours the world representing his country, and by extension, his province. Incidentally, I should mention that our reading of the Criminal Code suggests that low-powered air rifles may actually be included in your act. That certainly could not be tolerated and I am sure it is not your intention.

1700

Fourth, with respect to subsection 3(4) of the bill, where is the citizen's right of appeal if he or she feels the minister has erred? Surely some appeal process would need to be implemented if you went ahead with this bill.

Because we were not notified of either this proposed legislation or these hearings, we could not be present until today. We did, however, secure a copy of the Hansard for 20 November which contained some interesting reading.

Mr Kormos stated on page J-60 that "a police officer can be confronted by an unloaded real gun and his situation is no less or no more unsympathetic. The situation does not change." He went on to point out that the Criminal Code of Canada adds one to 14 years to the sentences of parties using firearms in the commission of a crime.

Surely, instead of passing more legislation which will infringe on the rights of honest citizens and likely make police officers' jobs more dangerous, you should merely be insisting

that the federal government apply the same additional sentencing for the use of replicas and allowing no plea bargaining with that aspect of it. Put the responsiblity where it rightly belongs and where it can have the most effect, and that is at the Criminal Code level.

Second, on page J-61 Mr Kormos stated, "Collectors, enthusiasts and shooters are not the people we are concerned about." In a different sense, you should be. Their rights to collect and their desire to safely educate others could be seriously affected by the proposed legislation.

On page J-62 Judge Allen pointed out the registration system which applies to real handguns. Your proposed legislation goes even further for replicas. Surely that does not make sense. At worst, replica handguns should not be subject to more stringent control than real handguns, nor should replica rifles be more restricted than real rifles.

Mr R. F. Johnston's point, mentioned by Mr Neumann on page J-64, bears repeating: "Do we not understand that in fact this is a very dangerous kind of infringement on civil liberties by the state and that the carrier of a weapon, whether it is a real one or a replica, who involves himself in a crime bears some responsibility at that time?" Clearly that is precisely the case.

I am afraid Councillor Jakobek, on page J-71, has misled you. He said, "We sent out notices to anybody who had anything to do with handguns or replica guns or firearms whose name we had or were able to solicit from mailing lists." If that is true, they did as bad a job of notification as they did of drafting their bylaw. The Ontario Federation of Anglers and Hunters, the largest group involved with firearms in Toronto and across the province, was never contacted about Toronto's onerous bylaw. In fact, now that we have learned of it, we have written Mayor Eggleton asking the council to "reconsider this bylaw and give affected parties the opportunity for comment."

In conclusion, it may be worth reminding ourselves that criminals operate outside the law, and as one inmate of Warkworth penitentiary once said in response to a survey, "Criminals will always be able to acquire guns regardless of what laws the government passes." In other words, only honest citizens will be affected and both police officers and the general public may well be in greater danger than they are today if you approve Bill 145.

Although the bill's author undoubtedly had good intentions, his solution is not the correct solution. On behalf of our 73,000 individual members and our 450 member clubs, I urge you to do away with this bill. I urge you to write to Mr Lewis in Ottawa. Tell him that you will stand for no more plea bargaining, that you want the mandatory one- to 14-year sentence applied every time. Go after the criminals. Leave law-abiding citizens alone. You should not be trying to do the federal job.

Thank you for the opportunity to appear before you. Good luck and Godspeed.

The Chair: Thank you, Mr Morgan. Are there any comments or questions by any of the committee members?

Mr Farnan: I would like to say that it was a very good presentation. It is absolutely amazing how you can listen to one presenter and say, "You know, this guy is right," and listen to another presentation and say, "This guy is right too," because the arguments are very strong.

Mr Morgan: I would be pleased if you would settle for I am right.

Mr Farnan: I think you know what I am saying, that obviously you have addressed the issue from a particular perspective and very powerfully. At the same time, when the police officers and police authorities are present and making equally powerful presentations, again it is impressive and persuasive. I think the committee has the job of looking at that with the correct balances.

Mr Morgan: Mr Farnan, there is one thing where the police forces and ourselves would find common ground. We could all sit here at this table and make exactly the same point. We would all be delighted if you would go after the federal government on that mandatory one to 14. That is the solution. Let's get after those criminals.

Mr Farnan: Without question.

The Chair: Mr Farnan, it is the strongest endorsation I have ever heard for having public committee hearings.

Mr McGuinty: I missed your first point, Mr Morgan, but I must say I was very impressed by your presentation. There is one thing that I think we politicians must never forget and that is that politics are not policies. Politics is people and we depend on people such as yourselves speaking on behalf of your 73,000 members and your 450 clubs to tell us what is going on out there. I really thank you for your very convincing presentation.

Mr Morgan: Thank you.

The Chair: Any other comments or questions? Mr Morgan, thank you very much for your time and your brief.

Mr Morgan: I appreciate the opportunity.

The Chair: The next presenter is Aldo Perrone from Brass Eagle Inc. Would you identify yourself for the record, Mr Perrone?

BRASS EAGLE INC

Mr Perrone: My name is Aldo Perrone, president of Brass Eagle Inc. We are a Canadian-based company and we sell millions of dollars worth of these air guns around the world each year. I had a script written, but I am going to change it because a lot of questions were asked and a lot of answers were not given.

People asked how many guns were sold or how many people play this game. Well, 100 million paintballs are used just in the United States alone. We supply, plus the air guns, worldwide about 250 million paintballs. We sell about 22,000 guns a year. These guns are not cheap. The cheapest gun they could purchase is $150 to $525. They are not toys. All of our guns state on them, "This is not a toy".

Bill 145 says "replica." We do not think we are replicas. We are paintball air guns. I would rather answer some of your questions more than try to tell you about drunk drivers–you do not stop alcohol–or if people commit a crime–I would rather have you ask me some questions and we will take it from there because I think I am just going to repeat what everybody has said one more time.

The Chair: Are there any questions or comments? Miss Nicholas.

Mr Perrone: You have one of our catalogues there.

Miss Nicholas: Yes.

Mr Perrone: We manufacture every single one of those guns. We have millions of dollars tied up in it. We just want to make sure we do not fall under Bill 141.

Miss Nicholas: Bill 145.

Mr Perrone: Bill 145; sorry.

1710

Miss Nicholas: I just wanted to point out, because the presenters have stayed here, that we have our summary from our legislative research of those who came before us in favour of this bill and opposed to this bill until today.

Mr Perrone: Well, we never heard about it.

Miss Nicholas: I recognize that notification and I know we all welcomed the opportunity to have more people come in, even though we were anxious to get on with it, and we had only one opposition before today. It was a very compelling group of people who came and endorsed Bill 145, if I may say so, with the police, etc, and their personal concerns. I remember one man said: "Shoot or don't shoot. That is sort of the decision we have to make."

I just want to say I am really pleased that you and others have come today, because it has shed a different light on it, both from the commercial aspect, which is something we always have to be concerned about, and from the recreational aspect, which I must admit I am a little less supportive of. I wish they would all come mow my lawn instead of running around doing this, but that is all right. I agree that a lot of people thought when I swam across the English Channel 19 times that that was a bit crazy too, so I am taking mutual respect here.

I am just curious; do you manufacture for all these–

Mr Perrone: We also manufacture for–

Miss Nicholas: And you manufacture in Mississauga?

Mr Perrone: Yes.

Miss Nicholas: So you are not just distributing here.

Mr Perrone: No, no. We manufacture and design.

Miss Nicholas: Have you stolen my catalogue?

Mr McGuinty: I borrowed it.

Miss Nicholas: Give it back. I need it.

Mr McGuinty: After your sexist remark about having us mow your lawn.

Miss Nicholas: It would be good recreational and sport use.

Mr Perrone: We also supply different police departments, Millhaven Penitentiary, the Federal Bureau of Investigation down in Walkhill and about 50 different sheriffs' departments in the United States, and we supply England, France and Italy. So we definitely do not want to fall under Bill 145.

Miss Nicholas: As it reads now, I think you would have fallen under Bill 145, and I just wanted to say I appreciate it and I was just curious whether you were a distributor.

Mr Perrone: No. We design and manufacture every single one of those guns.

Miss Nicholas: But you actually do it on location. Great.

Mr D. W. Smith: How many people do you employ in your business? Maybe you know, of the total manufacturers, how many people we

might be talking about in employment in this type of industry.

Mr Perrone: Okay. I will answer two questions, the employment, and you also asked a question before about how many people play the game. In California state, 100,000 people play every weekend. That is one of the biggest states that plays the game. In Canada, you could cut it down to about 22,000 to 25,000 people who play every weekend. Ontario-wise, you could cut that down by roughly 50 people playing on each field on Saturday and Sunday, which makes it 100 times about 40 fields, so you will get your answer there.

But the sort of people who play it are more like professional people, like office people, construction people, a lot of lawyers and a lot of doctors. They just want to get away and just do something out in the woods.

Mr D. W. Smith: Vent their frustrations, likely.

Mr Perrone: That is right, and these are the people who get lost on two acres of land. They are not hunters. They are not–whatever you want to call them. You put them on two acres of land and you have to go in and get them out. Those are the kinds of people who do play the game.

Mr D. W. Smith: Any politicians?

Mr Perrone: Yes. But paintball-wise and gun-wise a lot of people are being employed. Just by our firm there are 22 people directly and indirectly. Some work we do subcontract out, like some of the plastics and some stuff. We also purchased a paintball machine which we are going to make the paintballs with. We used to buy the paintballs, but right now we just purchased a machine. There is $1 million to set up a plant. Where is that going to go to?

Mr McGuinty: How long have you been in business, Mr Perrone?

Mr Perrone: In manufacturing, five years. We are actually the world's second-largest maker of air guns for paintballs.

Mr McGuinty: Amazing. You started in Ontario. What is your yearly production value? What is the gross–

Mr Perrone: Gross business? What do you mean–money?

Mr McGuinty: Yes.

Mr Perrone: I would rather not say.

Mr McGuinty: Okay.

Miss Nicholas: Do you make money, is what he is asking. Yes or no?

Mr McGuinty: You employ 22 people?

Mr Perrone: Indirectly and directly.

Mr McGuinty: I see. I just want to assure you that the life-blood of this province is not found in Dofasco Inc and in General Motors of Canada Ltd. It is in small business people such as yourself, and that is a very important aspect of this whole consideration.

The Chair: If there are no further questions or comments, thank you very much, Mr Perrone, for your submission and your comments.

Next, we have a submission from Superior Firepower and Flag Swipe Inc. I think there is a joint submission. Gentlemen, would you come forward and identify yourselves, please.

SUPERIOR FIREPOWER
FLAG SWIPE INC

Mr Lukas: My name is Michael Lukas. I am the owner of Superior Firepower in St Thomas, Ontario, right near London.

Mr Strocki: My name is William A. Strocki, president of Flag Swipe Inc, London, Ontario.

Mr Lukas: Due to some of the questions that have been put forth by some of the committee members, I would like Bill to give you just a basic definition of what the paintball game is all about so that you will have a better understanding of it. I believe that would be a good idea. He is going to read it.

Miss Nicholas: You are going to try to sell me on it.

Mr Lukas: Yes, we are. We try to sell everyone on it. This is being read from the brochure of the IPPA, the International Paintball Players Association, which is based in California. There are over 150,000 people who have joined this organization. It is a nonprofit organization that represents the interests of paintball players all around the world.

Mr Strocki: What is paintball? Paintball is the world's new outdoor participation sport. It is a combination of childhood hide and seek and tag, but more sophisticated and challenging. A group of paintball players usually divides into two equal teams, varying in size from four or five to as many as 500 on a side. The object of the game is to go out and capture the other team's flag while protecting your own. Games usually have a time limit of 30 to 45 minutes. While you are trying to capture a flag, you also try to eliminate opposing players by tagging them with a paintball expelled from a special paintball gun. A paintball is a round, thin-skinned gelatin capsule.

Paintballs are very similar to large vitamin capsules or bath oil beads.

Paintballs are filled with a nontoxic, noncaustic, water-soluble biodegradable liquid. They come in a rainbow of colours: blue, pink, white, red, orange, yellow and other bright colours. When a paintball tags a player, the thin gelatin skin splits and the liquid inside leaves a paint mark on the player's clothes to signify his or her elimination. A paintball gun uses carbon dioxide, CO^2, to propel the paintball. For safety, paintball players always must wear approved goggles to protect their eyes during a game.

As long as goggles are worn, paintball is a very safe sport. Insurance statistics indicate that paintball is safer than golf, tennis, swimming and many other sports. Referees on the field start and stop games, enforce the rules of play and control the sport's safety. Most fields have a large staff of referees and run games on different parts of the field simultaneously. Paintball is also played in arenas for spectator enjoyment.

Paintball is a sport played by people from all professions and all lifestyles. It is a sport where women stand on equal footing with men. Physical size and strength do not create a star; rather, it is one's ability to think, like in chess, that helps make the star. Paintball is a character-building sport. Players learn the importance of teamwork and gain self-confidence while developing leadership abilities.

I would like also to add that part of the problem here, without going off on a tangent from Bill 145, is not to make it known that paintball is safe or is an accepted sport and how it should be accepted but rather that it does exist, which you already have found out from what the people before me have said. I personally feel that today is not the day to discuss paintball in general. That is for you to figure out later on, and whether or not it should be legislated is something for you to debate in the House, among yourselves or with your own consciences.

What I do propose, though, is that you look at paintball separately from Bill 145 and maybe even take the time to go out and visit a local paintball field. You are welcome to come down and see my operation at Flag Swipe any time. Paintball is a viable alternative to drugs, alcohol and the like. I compare it more along the lines to a chess game, as does this literature or, for your information, maybe even a videogame in the woods.

I can only speak for the way my field is run and operated, but at my field in particular, the way to win the game is to capture an opposing team's flag. If you have 15 people per side, the red team has 15, the blue team has 15, and the red team eliminates or tags out every single player except for one. That player captures and returns the other team's flag. The team that eliminated the most players loses on the basis of points generated by flag captures and the like.

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I do not have any aspirations to visit Cambodia or Angola on my summer holidays. I do not own real firearms and I do not fire anything like that. I do not own replicas, but I do implore you to look at paintball separately when you are addressing Bill 145 in the House.

The Acting Chair (Mr D. W. Smith): Thank you, Mr Strocki. Mr Lukas, have you got more comments to make?

Mr Lukas: Yes, I do, but if you would like to ask any questions at this point, I would wait.

The Acting Chair: I have a couple of questioners. Do you want them to ask their questions first?

Mr Lukas: Certainly. I think that would be appropriate.

Mr McGuinty: I have just an observation. The more you speak about it, the more I am inclined to join my son the next time he goes out. It sounds like a hell of a lot of fun.

Mr Strocki: It is, and, taken as a sport, there are many great things involved for people who want to do something exciting, something new, and God knows the old commercial where life got tougher, it really did. This is something where we can go out and forget about our troubles for the day. I am not advocating war and, as I say, it is different depending on the type of game you are going to. Maybe that is what we should debate later on, but paintball as a sport is something totally different and it should be considered differently.

You will be affecting a lot of people if you include paintball guns, and I am not knocking the legislation. As a matter of fact, my personal belief is that we should have stronger controls on guns in general and give the police more control in their jobs and not tie their hands behind their backs. But I am not educated in that area, and I am sure that you people are in contact with the police on a regular basis.

I think the main thing I am concerned about is that my industry and a lot of people, thousands upon thousands of people since the sport began, will be affected. We do not want to be grouped in with the lunatic fringe.

Mr McGuinty: Well, I think your point is very well made. It is not the function of the state or the government to intrude into an area such as yours.

Mr Strocki: Thank you very much, sir.

Mr McGuinty: I think you have put it forth in a very convincing and attractive way, and I commend you.

Mr Strocki: Thank you. You are welcome out any time.

Miss Nicholas: I had a comment and I do not know if it will lead to a question, so bear with me. I think your description is very helpful, and I think when I said it was scary, I saw the commando outfits and things, etc.

Mr Strocki: Certainly.

Miss Nicholas: That is scary if people are using that as a way of venting their frustrations and go further. As long as it is left on your field, then I think it is acceptable. I think we cannot separate the paintball game, as you suggested, from this legislation because, while we may try–and we are not judging the game; I do not mean to do that–you have enlightened us as to the constructive uses replicas can be put to. I would consider your gun–it looks like a replica on the street. It would look like a real gun to me–

Mr Strocki: Most definitely.

Miss Nicholas: –and I would certainly believe it to be real.

So it comes within that, and I think you cannot separate it as you may have suggested. It has provided for us today knowledge of your industry and of the people who are involved in it. I am thinking that maybe we should get out a little bit more, because I did not even know it existed. For that reason I think it was very valuable for you to come today.

Mr Strocki: We almost did not know that you existed as far as Bill 145 was concerned.

Miss Nicholas: I think what I was going to say was that where we were coming from, and I think where Mr Farnan was coming from on this bill, concerns the fact that replicas have been used in means that are not proper ones. They have been very tragic situations, and I think now, with what you have presented to us today, we are going to have to take some of this into consideration if this bill goes forward.

Mr Strocki: I have some last comments. I would like to add also that certain states in the United States have already passed antitoy, antireplica laws and have excluded specifically paintball guns in them. Among them would be California. The International Paintball Players Association has a lot of information on why the states have done it and where they have done it. I believe that they can be contacted through the information that has been left with you people.

To just bring it on home, the last thing I want to say is that if I were to be dressed in a pink and purple outfit and it afforded me the camouflage necessary in my natural environment, which is my playing arena, you would see me wearing a pink and purple outfit, but because camouflage has been adapted by the military–I know we smack of being a caricature of war and we are not here to debate paintball, so the last thing I am going to say is that it is something that must be considered.

I thank you very much for your time. I know Mike Lukas has a few more things to say, but if you need to contact me I am in London in the white pages under Flag Swipe and in the yellow pages under adventure games.

The Chair: Before we get to Mr Lukas, Mr Strocki, I think Mr Farnan had questions or comments.

Mr Farnan: I appreciate the tack you are taking in terms of accommodation and looking at this as something to be addressed. Who produces Paintcheck magazine?

Mr Lukas: Paintcheck is one of the national publications. It is produced in New York. The other information I have provided to you has the addresses of five large paintball magazines. In the United States the circulation of the three main ones is a little over 200,000 copies a month.

Mr Farnan: Right. I have to take the remarks of your colleague in context and it is very difficult, I have to tell you, looking through this magazine, to see this as a simple game. One can look at the commando style outfits and also the actual advertising, which is extraordinarily militaristic in both its expression and its visuals. I suppose I am not personally convinced. I am not going to make a prejudgement on this. There are members of the committee who have listened and have said: "Gee, what a great sport. I must go out and be involved in it." At this stage, I probably need to go out to be convinced, because if I were to look at this magazine I would say, "There's no way I would be associated with the sport."

Mr Strocki: I said the same thing, sir. At first I was questioning why I was playing it in Vancouver. But once I played the game–that is what the problem is here. There are preconceived notions and imagery that is distasteful. I will admit that much. But once you see paintball run

on a properly organized field with customer safety kept in mind, I am sure you would be swayed. It is something you have to see to believe.

Mr Farnan: If I were looking for a reason to take a negative view towards your sport, I would look at these magazines. If you want an image that is different from the United States, I should think you should look at creating an image for yourself that is a lot less militaristic, because I do not think that would find support in Canada. The second thing is just out of interest's sake. If I get clipped with one of these on my hand–I suppose I would be wearing protection–what is the kind of force? Is there pain involved?

Mr Strocki: In general, I believe the force it is going to hit with is 12 pounds per square inch, depending on the type of paintball. Mr Perrone from Brass Eagle will probably have the–

Mr Farnan: What do I do? Do I say, "Ouch," and, "I am okay"?

Mr Strocki: Because of the adrenalin flush, I would say you are probably likely to say, "Darn," number one.

[Laughter]

Mr Strocki: Okay, you will say more than, "Darn." Have you ever played hockey or football? I played goalie in hockey and played quarterback in high school football and I am here to tell you that as far as paintball is concerned, it is a cakewalk next to those two sports. I have been hurt in warmups in hockey from my own teammates. I have never once, other than a sprained ankle, been hurt in paintball. I am a full advocate of full head protection, but here we are getting off on a tangent discussing paintball and using up your valuable time, which you have set aside. The bottom line is that it is a separate sport and should be considered such.

Mr Farnan: I think you are right. I am getting off on a tangent.

Mr Strocki: I appreciate the fact that you are interested. It makes me feel better and more comfortable that you are possibly going to look at it differently later.

The Chair: Mr Lukas, you have about 10 minutes left.

Mr Lukas: I will keep it as short as I can. Bill Strocki made a point in the literature that was restated from the IPPA that a paintball gun is used, and that is the specific use of all these pieces of equipment that you see in these magazines. There is no other physical use for them. They are designed to fire a gelatin-covered capsule containing liquid that will put a mark on a person or a tree or an object, whichever you prefer.

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Of the guns that are sold on the market, as you will see in those magazines, about 95 per cent of them are what we class as a .68-calibre gun, four per cent fall into what would be a .62-calibre and a .50-calibre gun, and one per cent would perhaps fall into a gun that would be more like a replica gun. Our company does not sell that type of equipment. We stay within the regular norm of paintball that is accepted by the industry, what you see in those magazines and in the literature Brass Eagle has presented to you.

In the United States in 1988, Congress was processing a bill regarding toy gun marking, and we see the results of that in our stores today. Many of the toy guns that are manufactured in the United States have large orange marking devices on the front barrel to go within the rules of that law. Paintball guns at that time were exempted because of the work of the IPPA, because they were used for a specific purpose. That is what I am trying to make a point of here. It is a specific purpose.

Safety in paintball is the primary concern. As you also may have noticed in those magazines, there are many ads regarding safety equipment and different forms of it, and we really promote safety to the nth degree. It is very important. The information I have given you, just to review it, tells you a little bit about paintball from the IPPA's perspective. It is information that has been taken from newspapers and paintball magazines and it is very accurate. It also gives the addresses of the major paintball magazines around the world, and rules and accident statistics on paintball, which is safer than playing golf in many cases.

We also cover some environmental issues and such, and I think that is just in there for your information. I have also enclosed a letter that covers my concerns regarding the sale of guns in Ontario, which is our business. We have been in business two years and this year we have sold approximately 275 paint ball guns to date.

The bill that you propose is not going to eliminate paintball. Fields such as Bill's are going to run regardless of whether you put the bill in. He has his guns. He can buy them from out-of-province and from the United States, as will anyone else in this province who wishes to buy one and your law will not affect him in the least. What you are basically doing is putting any entrepreneur who sells this equipment through

literal hell and certification programs that are not necessary.

What will happen is that either the price of the equipment will rise between $30, $50 or perhaps $100 a unit, because these are very specific pieces of equipment. I deal with a number of manufacturers in the United States. We carry 32 different kinds. There are 250 different kinds available to us to carry. We are going to add eight to 10 new ones this year. Each one of those would have to have a certificate.

In talking to the manufacturers in the United States, basically they said, "I guess we're going to be selling our stuff to the people in Alberta and Winnipeg and other places like that," and they are going to service Ontario on a mail order basis. "If you want to carry it, you cover the cost," which is myself. In the case of Brass Eagle, we will be lucky. The guns will certainly be issued a certificate because they have a use under what you have set up here. But what is the purpose of it? You are putting undue emphasis, or undue duress, whatever you want to call it, on the purchaser of the equipment and myself and costing the government in Ontario a lot of money in sales tax alone, and other areas as well.

We oppose the bill as it is. We recommend that you exempt this type of equipment from that law. That is all I have to say except for a figure. In Canada last year, according to the IPPA–the figures that are in here regarding play in Canada are incorrect–there were 250,000 people who played. In Ontario alone there are at least 125,000 people who play every year. Many of those people are buying guns for their own use in order to be able to play better, because they can maintain the equipment better, and to keep up with the leading edge of technology in paint guns, which is just incredible. It is as fast as electronics right now. New models come out monthly, literally. Thank you very much.

The Chair: Are there any further comments or questions? If not, thank you very much, gentlemen.

There are a couple of matters of committee business that we have to deal with. First of all, it is a question of scheduling clause-by-clause for Bill 145. I assume, from the comments a number of the members made today that probably at least a week to think about the particular law and perhaps consider amendments, etc, might be advisable and very wise.

Miss Nicholas: I agree with that.

The Chair: The other item of business which is connected to this is the fact that I will not be able to be here tomorrow because I have a funeral to attend tomorrow in Ottawa. I understand from the vice-chair that he will be unavailable tomorrow afternoon because he is going to be dealing with some legislation in the House. If there is a strong urge to proceed with the original business tomorrow, which is submissions on alternative dispute resolution, we can do that using subs. Alternatively, because we had a cancellation next Monday, we can postpone tomorrow's business to next Monday.

Mr Farnan: I hope we would deal with Bill 145 next Monday. I think in fairness to the process, if tomorrow's business needs subs, we should get subs for that.

The Chair: I understand from the clerk that in terms of who will be making submissions on ADR in the first session, there will be time to do both next Monday if need be, clause-by-clause on Bill 145 as well as the submissions on ADR. The ADR submissions will be from our researcher, Ms Swift, and someone from the Attorney General's office, giving us an overview on that particular issue.

Mr Farnan: Is it possible to do Bill 145 initially and do ADR at five o'clock?

The Chair: We can order our business in that way if it is a wish of the committee.

Mr Kanter: It sounds as if there is a consensus that we should not meet tomorrow but rather meet next Monday to do this clause-by-clause first and subsequently the ADR.

The Chair: We will do clause-by-clause on Bill 145 at 3:30 pm next Monday and at five o'clock we will have two submissions on ADR, one from the committee researcher and one from the Attorney General's office. Do we have a consensus on that? All those in favour? All those opposed?

Agreed to.

Mr D. W. Smith: If we could get to start at 3:30 it would help too.

The Chair: We will use our best efforts to commence at 3:30. If there is no further business, this meeting of the standing committee on administration of justice is adjourned.

The committee adjourned at 1737.

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Substitution:

Farnan, Michael (Cambridge NDP) for Mr Hampton

Clerk: Arnott, Douglas

Staff:
Swift, Susan, Research Officer, Legislative Research Service

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From Joe Survival Adventure:
Logie, Glenn, President

From Got-ya Survival Adventure:
Medwid, Jeff, President

From the Ontario Federation of Anglers and Hunters:
Morgan, Richard G., Executive Vice-President

From Brass Eagle Inc:
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Lukas, Michael, President

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Strocki, Bill, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 18 December 1989

The committee met at 1558 in room 228.

GUN REPLICA SALE PROHIBITION ACT, 1989 (continued)

Consideration of Bill 145, An Act to prohibit the Sale of Gun Replicas.

The Chair: I would like to convene this meeting of the standing committee on administration of justice. For the record, I want to indicate that Mr Sterling, the representative from the Progressive Conservative Party, has given us his permission to proceed in his absence. He is involved in debate in the House.

Today we are dealing with clause-by-clause consideration of Bill 145, An Act to prohibit the Sale of Gun Replicas, referred to the committee on 16 June 1988. Are there any comments, questions or amendments to this bill, and if so, to which section?

Miss Nicholas: I am afraid I am going to need a copy of the original bill. Do we have any more of those? This is about the seventh copy you have provided me with.

The Chair: I take it, Mr Farnan, you will be speaking soon?

Mr Farnan: Pardon?

The Chair Will you be speaking soon? I am sorry; proceed.

Section 1:

Mr Kormos: Perhaps I should tell you that I am going to have to leave committee because of some of the bills that are coming up in the House this afternoon. I will perhaps jump line and speak briefly. Eventually I will refer to the definition of "gun replica," but I want to preface my comments about section 1 of the bill and particularly the "gun replica" definition.

It seemed that there was some clear overall support from police officers, and virtually everybody other than some groups representing very modest and small segments of the community, in support of the bill in general. There was some concern expressed, at least implicit in the comments of a number of people, about the definition of "gun replica."

Having not only read the definition but considered the definition in context of the comments that were made about it, I am confident that upon reflection–and the more one reflects on the definition, the more one realizes it–it indeed is a very precise and well articulated definition that speaks to those very things that the police officers, among others, expressed; the genuine fears that the thrust of that definition goes to the literal replicas, things that are designed to be identical in every respect but for the functional quality of them to real handguns, and encompasses at the same time those other things that may not be made with the same degrees of sophistication as those pure replicas but are sufficiently close to pure replicas to be confused with real guns.

In my view, to start toying with the definition–that is a poor choice of words, but to start tinkering with it–would be to destroy the precision with which it is currently drafted. I am reflecting and commenting on what I saw as perhaps the primary concern with respect to the definition. What I am saying is that I am confident that the definition does exactly what everyone who spoke to the legislation wants it to do. It is neither too narrow nor too broad. It is a good definition and should be maintained as it is written here.

The Chair: Thank you. Any further comments?

Mr Farnan: Basically, I will make a comment. I suppose the most compelling test for me came from police associations, police commissions and police authorities. I am not going to go through all of them, because when we talk about police commissions, police associations and brotherhoods, we are talking in the range of 70 groups. AMO is also on record.

I am just going to make a couple of quotations on behalf of the 4,500 members of the OPP: "I urge you prohibit the sale of replica guns as proposed in Bill 145." That comes from the Ontario Provincial Police Association.

By the same token, the Municipal Police Authorities conclude their brief by saying, "Police governing authorities in Ontario have demonstrated overwhelming support for this bill and we encourage the standing committee on administration of justice to provide unanimous support and push for third reading."

I do believe that it is a very difficult area, but I am convinced that the way in which the bill is structured is a workable structure.

One of the problems that emerged during the discussions was that I think some committee members said, "I'd hate to be the bureaucrat who called the play on what's a replica and what's not a replica." I am afraid that we have to be concerned about providing that individual with some reasonable guidelines. I think the police officers who were before us talked about imitations that are the same colour and the same shape and are very clearly easily mistaken for a real gun. The police associations also indicated that they would be willing to assist in the kind of definition so that we are not putting somebody out there on his own without guidance. I think the definition in the bill, plus the offer of consultation from the police forces, addresses that particular problem.

There is no way that we can have control in terms of saying that these guns will not be available. A member of the committee mentioned just a little earlier that somebody can purchase such a replica outside of the borders of Ontario. That is true, but we weigh that against the evidence of the police officers who appeared and who said that crimes committed using replicas, or most crimes in fact, are crimes of opportunity and crimes of the moment; that they are not things that are planned over a long term. If it is planned long-term, I suspect it is more likely to be a real gun. With the crime committed on the spur of the moment, more or less instantly as an opportunity arises, a gun readily available for $5 in one store becomes the weapon to frighten the victim with in the store next door. That is a crime of opportunity.

One of the problems we have had as a committee is the same problem that a jury or an inquest has. They can sit and look at a gun for a day, a week or a month and speculate as to whether it is real or not real or why one would consider it not real. For the police officer, it is a fraction of a second. Again, I believe the most compelling testimony in this regard was provided by the brief by the Ontario Provincial Police Association when it opened its brief with the comment:

"Shoot, don't shoot! You just had a split second to decide. (A) You were too slow, and fatally shot by an aggressive criminal. Or (B) you fired, striking the suspect in the chest. You approach the body and determine he was not carrying a loaded firearm–only a replica."

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We have been told that the incidents with replica guns are increasing. I think we had extraordinary support for the legislation. I would suggest to this committee that the testimony that was given by the police officers probably suggested that the legislation did not go far enough. Certainly they were looking at including possession as part of the ban and I am open to that kind of amendment. However, I am looking for something the committee can live with. Therefore, if any other member of the committee would like to move that forward as an amendment, I am prepared to support it.

I present this particular bill precisely because, as I stated in my remarks just now, the police associations are saying they want this bill supported and the police authorities are saying they want this bill supported. My sense of the general public, from the contact I have had on the issue, is that the general public wants this bill supported. I think there are other issues, but I think they are the most critical ones.

Going back to who makes the decision, I do not think we are isolating a bureaucrat anywhere and I do not think we are putting an onerous responsibility on any bureaucrat to say, "This is or is not a replica gun." I think the definition itself makes it obvious. If the gun is purple, obviously it may pass. If its shape is so unusual as not to reflect a real gun, it may pass. If, on the other hand, the shape and the colour reflect that of a real gun, it would simply be rejected.

I would also add that as we have been in session, as the committee will be aware, having received the same information as I have, I am sure, various municipalities have been bringing forward bylaws. I think we probably have about four on the books at the moment where a bylaw has either been passed or has been brought forward for debate, but these municipalities are scattered.

This particular issue has been sort of thrown back and forth between the provincial and federal governments for a while. Like many members on the committee, I would like to see the federal government take the initiative, but the federal government has not taken the initiative and I think it is wishful thinking to think that there will be any kind of uniform policy across the board provincially. In my view, it would be an impressive step if Ontario were to take a leadership role and provide a uniform approach to this critical issue across the province, so I am looking forward to the debate we have on the bill and to looking at the clauses individually.

Mr D. W. Smith: I will try to be as brief as I can. I have listened to most of the presentations here on Bill 145 and I certainly have to sympathize with the position the police take. I do

not think any of us can understand what it would be like to be faced with a gun, whether it is a toy or whether it is the real thing. Even for a store clerk, I cannot even imagine what the feeling might be.

But I think anyone who has ever been given a gun to play with or use or whatever he does with them–certainly as a kid I had them–should know full well that if he puts a gun to somebody in an intimidating way when he knows it might be a police officer who would likely have a gun, or if he took actions in a store to try to rob it, he would have to face those consequences. It sounds like a cold, crass way of thinking, possibly, but that is a reality, in my mind.

I do not think we are going to change the world or make it very much different by voting in favour of this bill. If we pass it, then we are going to put manufacturers out of business and the guns, if someone wants them, can come in from some other jurisdiction.

As I say, I will be as brief as I possibly can, but I do not feel that I can support this bill the way it is, even with amendments. I think people have to be responsible for the actions they take, and if the police have to act accordingly, people have to be aware of that. I am not going to say that I am not defending our police forces, because there are not many of us who want to do their job and it is a dirty job in some ways. I think my position on this bill is that I will not support it and hopefully things will not change out there in the real world that much because we do not pass this bill.

Miss Nicholas: Are we just making comments now or are we taking amendments?

The Chair: We are on clause-by-clause and it is open for anyone to propose an amendment.

Miss Nicholas: I will just make initial comments then, and then I will go with the amendments I might have.

First, I think it was overwhelming, the police who did come before us, and they are the individuals who have to deal with this. Yes, a store clerk might be faced with a replica gun and not know whether it is real or not, but the police, generally speaking, have to make the decision whether to react in a reciprocal way with someone who has a replica gun and I sympathize with them having to make a decision from a distance as to whether it is a toy gun or not. From the guns that I saw before us, I can very well see how convincing they may be to be real. I was very pleased to see the replica guns in here, because I must admit I do not frequent toy stores a great deal and I had not had an opportunity to see what we were talking about closely, so I think that clarified the issue a bit for me.

Having said that, though, I was really glad that we had the extra day of sitting and we had the different game industry people come in here. I know we should not put an industry under criticism, but at the time I mentioned that I thought these paintball games were a bit scary. I think it was scary for me because people dressed in commando outfits and appeared to be under commando tactics. While I am sure the individuals are having fun, it is exhilarating and it is good stuff for them to be doing, I have my reservations about whether I would like my children or friends of mine to be out playing war games.

In any event, it is a thriving industry and it is one that people seem to be enjoying and not creating a lot of harm. I do not know how we satisfy them and allow them to continue in their industry. They certainly made me sensitive to their industry and to what it is they are doing, so I was pleased that they came before us, because I think I had not given their side of the issue very much thought until they did come before us.

The concern I have with the bill perhaps is with–section 2 is one that I have problems with, "No person shall sell a gun replica or offer a gun replica for sale." I would like to broaden that a bit more to include corporations and firms, agents and employees so that we are not just talking about an individual. I would certainly be anxious to hear any comments that Mr Farnan has on it, but I would suggest something along the lines of, "No person, firm, corporation or agent or employee thereof shall import, manufacture, sell, hold for sale or distribute within the province any gun replica."

The Chair: Were you making a formal motion?

Miss Nicholas: Yes, I was.

The Chair: I wonder–

Miss Nicholas: I can give you a copy, or do you want to wait?

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The Chair: I wonder if perhaps we can have a comment from legislative counsel before it is actually formally submitted as an amendment.

Miss Nicholas: Okay. Legislative counsel may do a great job with this, but I think I want to extend it beyond "person."

Mr Williams: I just want to point out to you that in law, under the Interpretation Act, "person" includes a corporation.

Miss Nicholas: It means a corporation? Because we make the distinction later on about

how much we are going to fine a corporation or a person. There is a distinction made later on–subsections 5(1) and 5(2)–with regard to the penalty.

Mr Williams: But it says, "If the person is a corporation," so it implies that a corporation already is a person.

Miss Nicholas: So in this section we will be including it?

Mr Williams: Yes.

Miss Nicholas: Then I want to extend it to "manufacture, sell, hold for sale or distribute." Can we do that?

Mr Williams: Sorry?

Miss Nicholas: We can expand it, though, to a person or a corporation–

Mr Williams: No, what I am saying to you is that "person" means corporation; it includes individuals or corporations.

Miss Nicholas: Okay, so that is the first part. You do not have to say "person," "firm," "corporation," "agent" or "employee"? Then I would extend it to "import, manufacture, sell, hold for sale or distribute within the province any gun replica."

Mr Williams: Generally in legislation we say "sell or offer for sale." That includes all the ramifications that would go beyond; whether you are at the wholesale level or the retail level, it is still distributing, it is still selling or offering for sale.

The Chair: I think at this point what we are doing is debating a possible amendment. I would prefer at this point to have the actual amendment filed and then we can debate it as an amendment.

Miss Nicholas: You asked me to question it with legislative counsel and legislative counsel just told me that may not be necessary. His interpretation of "sell a gun replica or offer a gun replica for sale" may include all of what I have said. We are just following your direction. You said to ask the legislative counsel.

The Chair: I had suggested that we have a comment from the legislative counsel, which we did. Having heard the comment and having heard the process of the debate, I thought it might be appropriate to determine whether in fact we are going to have an amendment on the table to actually debate at this point. Are we?

Miss Nicholas: I would like to hear more from legislative counsel. I am not thoroughly convinced that "shall sell a gun replica or offer a gun replica" includes "shall import, manufacture, sell, hold for sale or distribute within the province any gun replica." If he is telling me that it does, then I would like to hear it again, because I am not thoroughly convinced. Maybe you could really convince me this time.

Mr Williams: You have thrown a few other things in there besides the distributing. I think the importing would clearly be beyond selling or offering for sale, but that gets into more along the lines of possessing. Possessing would be a broader version of what you are saying. I think one of the other members of the committee mentioned perhaps putting the word "possessing" in there, and that would cover that. I do not want to get into which version you prefer. I do not know whether it is something we should discuss aside from the committee or not.

The Chair: I think we are into clause-by-clause now, and we only have a specified time period to proceed.

Miss Nicholas: I do not have to propose an amendment if you feel it includes most of what I have included. Does "sell a gun replica or offer a gun replica for sale" mean you cannot manufacture and export to another province? Does it mean you cannot import it? Does it mean you cannot distribute it?

Mr Williams: It certainly goes as far as distribution and offering for sale in any shape or form, whether it is at the wholesale or retail level. It would not cover manufacturing. It does not say you cannot manufacture; it just says you cannot sell or offer for sale.

Miss Nicholas: Manufacture like the Fuzzbusters. I am thinking of the Fuzzbusters. You could manufacture all you want, but you could not sell in Ontario. So they export it.

Mr Williams: It certainly does not prohibit manufacturing; it does not prohibit importing either.

Miss Nicholas: Okay. I am satisfied then, unless there is any further comment on my proposed, possible, maybe motion that I am putting forward. If legislative counsel is telling me that section 2 can be interpreted that broadly, then I do not feel an amendment is absolutely necessary.

Mr Kanter: I would like to indicate my general views on the bill, if I might, with a little latitude. I think Mr Farnan spoke generally about the principles of the bill. First, with respect to definition, with respect to Mr Kormos, I have some problems about the definition: I think it is a little too broad. I think there are a couple of general areas.

One is the great game of paintball, which I was totally, entirely, absolutely unaware of, unacquainted with, before the presentation the other day, but it seems to be a recreational activity that people like and does no harm. Indeed, I was amazed and a little shocked to find that it seems to be a lot less dangerous than racquetball, which I play, which is a totally non-arms-oriented game, but apparently the risk of injury is about 2.4 something even to those of us who, I hope, play racquetball with eye guards. The danger of this game seems kind of minimal.

I also think there could be a genuine collection of antique firearms, older antique firearms, things like that, which may not be covered in the definition. I would suggest, and I guess I would like to hear the views of Mr Farnan, the possibility of a definition that was perhaps a little narrower with respect to gun replicas.

Second, I agreed with the concerns of my colleague Miss Nicholas on whether the term "sell" was broad enough, whether it included things like importation, the idea of holding for sale or offering for sale, or the kind of thing that we frequently read in legislation, probably a hold-over from the time when lawyers were paid by the word, but maybe not; maybe it still has some practical application.

Miss Nicholas: They have simplified it since you and I were in practice.

Mr Kanter: I guess they have, Cindy; you are probably correct.

I was concerned as to whether the word "sell" was broad enough. What I hear is that legislative counsel suggests it may be broad enough. I would be interested, I guess, in the comments of Mr Farnan on that score.

The third issue, which really causes me the most concern with the bill as it is now drafted, comes in subsection 2(2): "No person shall sell or offer for sale a toy gun"–and that is a different item, defined differently from a gun replica–"that is not a gun replica unless the minister has issued a certificate of approval in respect of it."

I must tell you that this really causes me some problems. It causes me some problem, first, as a matter of jurisdiction. Whether this is under the jurisdiction of the Minister of Consumer and Commercial Relations of this province, the Solicitor General of this province or a federal authority somewhere really causes some jurisdictional problems.

But the real problem it causes me is one of practicality, because it seems to me that what the member is suggesting is that every toy store, and quite possibly every corner store, every variety store, be licensed or approved or has to get a certificate of approval with respect to every toy gun that is sold by every such store, or something like that. I have some real problems with that. As real as the harm, the concern, that Mr Farnan has raised, it would be, in my view, overkill to require licensing for every toy gun that is not a replica gun. In broad context, what I would suggest is a narrower definition of a gun replica to allow certain things–paintball guns, antique guns and that kind of thing–as a right, not to allow them by applying for a licence.

Second, we may be okay with subsection 2(2) if "sale" includes a number of things such as importation, holding for sale, offering for sale, distribution, that kind of thing. If "sale" is defined broadly, then that would be okay; I am quite open on that.

Third, I would find it much easier to support this legislation if it basically were a prohibition on the sale of gun replicas. I have no particular problem with that; I do have difficulties with a complex certificate scheme or licensing scheme for toy guns that are not gun replicas. I think that would unduly complicate the matter. I think it might cause so much difficulty and chaos in the toy business and the variety store business that it might sink the whole scheme.

I think that Mr Farnan basically has a useful proposal, and one that I would like to support, but I would like to support it in a way that is practical, in a way that does not restrict those who are having fun and enjoying themselves without causing any risk or apprehension of criminal activity and in a way that is practical and does not cause toy stores, the toy business, to come grinding to a halt.

1630

I would be interested in Mr Farnan's comments on that general approach, and if he is favourable, perhaps he and I could work together on some motion. I might suggest one, I suppose, that he might accept, that might be acceptable in getting part of his–I think the more practical part, if I may say–motion adopted.

The Chair: I will ask Mr Farnan to defer response until Mr McGuinty has made his comments. I think he is next on my list of speakers.

Mr McGuinty: I am still confused regarding the definitions. I do not have before me the definition of "firearm"–I have it in my other file–as in the Criminal Code. Presently, does firearm include pellet guns, air compressors, BB guns and those other types?

The Chair: Are you asking the question of legislative counsel?

Mr McGuinty: Yes, please. Does the Criminal Code definition of firearm include pellet guns, air compressor guns, BB guns, and so forth?

Mr Williams: I must admit I am at somewhat of a disadvantage. The first time I saw this bill was about half an hour ago. This is not my draft so I do not know what research went into drafting up the definition, including firearms.

Mr McGuinty: Do we have it handy, a definition of firearms?

The Chair: I think a definition of it was read into the record last time we met on this bill.

Mr McGuinty: I recall that, but I do not recall whether or not it included–

Mr McClelland: If it would help someone, I made an inquiry along those lines and the committee was advised by one of our witnesses, I believe a former police officer, of inclusion with respect to muzzle velocity speeds, so that within the context of certain specifics airguns were in fact included as firearms if they had a muzzle velocity, I believe, in excess of 500 feet per second. It is not a certainty, but it was in reference to a specific muzzle velocity. It captured an airgun within the definition of firearms under the Criminal Code.

Mr McGuinty: What category, then, would pellet guns, air compressors and BB guns that did not have that specified velocity come under? Toys?

Mr McClelland: I would think so.

The Chair: Presumably they could either be a gun replica or a toy.

Mr McGuinty: You see, we have three definitions: the Criminal Code definition of firearm, then replica is here, then toy. Actually there is a fourth that is not accounted for, a firearm that fires replica ammunition. But I am still at a loss as to where pellet guns and air compressor guns come into play. If they are firearms, why would there be a recommendation here that we include them?

Then the next statement is, "Bill 145 should not be amended to include firearms as defined in the Criminal Code." In the context in which that point is made, the implication is that they are in the Criminal Code. So I am confused on that. Still, I think what we are doing here is trying to, in a sense, exercise a minimal control over a large, large situation. The minimal control has to do with somebody using what we will designate as a replica, as determined by common sense prevailing, and hence making more difficult or prohibitive the occasion of using the replica in the commission of a crime. I guess that is what we are up to. In a sense we are putting our finger in the dike while the flood goes unattended; I think we are trying to cure cancer of the liver with a Band-Aid. The positive influence for good this may wield I think is minimal.

But having said that, I have the greatest respect for those who, in my mind, are the ones best qualified to advise us here, not constitutional rights paranoiacs who would interpret this as an infringement upon a basic freedom, but the ordinary cops on the beat, the policemen. We had an inspector here the other day from the provincial police. I thought he reduced it to a level of common sense that I found very convincing. He said something to the effect that replicas serve no useful purpose in our community and so probably the possibility of their being misused suggests that they should be prohibited. I favour the intent. I am dubious of the effectiveness and the practical order that will wield, but I think it is a step in that direction.

But honestly, I am still confused about the definition of firearm. I recall distinctly that it was written in a kind of legalistic hackneyed journalese that in itself was difficult to understand, but I can only assume that it does include pellet guns, air compressor guns and BB guns. If it does not, then we have a category of gun here that we are not–do paintball guns come within the purview of the definition of firearm? I never knew these paintballs existed. Yes, as a matter of fact, I did. One of my grandsons came from Florida for a week last summer and went out on one of these nutty exercises with my criminal lawyer son for an afternoon and got hit on the forehead with a splatch of this. Had it been somewhat lower he would have lost an eyeball. Where do paintball guns come in on this?

The Chair: I do not presume to want to take on the job of legislative counsel or drafter of the bill, but in order to expedite matters, I am trying to sort of clarify here. I think if we were to look at the hypothetical situation of enforcement of this particular bill were it to become law, then obviously the first step of the enforcer, if I can put it that way, or the legal authority, would be to look at the definition in the Criminal Code. If the particular object came within the Criminal Code, in his opinion, the prosecutor's opinion, then it is obviously a Criminal Code matter.

If in the opinion of the prosecutor it does not come within the Criminal Code, then one has to

look at the definition of "gun replica." Is it a toy gun or other object that resembles such a firearm or might reasonably be mistaken for one? Then I guess they make a factual analysis as to whether or not, in their opinion, it looks like a gun. In that eventuality this particular act would apply, but in the first instance anybody prosecuting or interested in upholding the law would have to make a determination as to whether or not it comes under the definition provided in the Criminal Code. In other words, then it would be a double process.

Mr McGuinty: And that is the way it conventionally works in law? I was not advised of that.

The Chair: That is how I would interpret this to work.

1640

Mr McGuinty: That is a good distinction, of which I was not aware. We cannot hope to define explicitly everything here. The interpretation that must be made is a follow-up to our statement in law.

The Chair: Before we get to Mr Farnan, I just want to raise one issue for clarification on my own as to whether or not it raises a doubt in anybody else's mind. If you look at subsection 2(2), "No person shall sell or offer for sale a toy gun that is not a gun replica unless the minister has issued a certificate of approval in respect of it."

What does that imply in terms of to whom the certificate shall be issued? Does that imply that a certificate shall be issued to the vendor, ie, a retailer? Would there be a blanket certificate that might be ordered and given to a manufacturer, who then would notify vendors that it is properly certified? Would it be possible for an individual purchaser to apply to the minister for a certificate to purchase an individual weapon? There is an implication here as to whom the certificate might be issued. Is that clear enough on the face of it? I am just raising that question for members of the committee.

Mr Farnan: Mr Kanter, I think, raised the same issue.

Mr Kanter: His was sharper than mine, but along the same lines.

Mr Farnan: There are a variety of points, maybe, that I would like to come back to and appreciate the climate of debate around this bill. I think the committee is indeed searching for the right weight or something that it feels comfortable with.

The Chair: In the spirit of co-operation, the chair wants to permit the dialogue to continue. However, I think the chair has a responsibility to remind the members that we are looking at clause by clause and normally, when we embark upon that process, we should be dealing with specific sections and specific amendments. I think the sooner we could get to that process, the better.

Mr Farnan: I would like to make an overall statement in response to some of the issues that are being raised and I think maybe that will affect the clause by clause.

When we talk about manufacturing not being included in the bill, in drafting the bill, the advice in discussions I had with legal counsel was that most of the manufacture is offshore manufacture, and I think we were talking in terms of toys. Basically, you are leaving the door open for export of the product. We are not actually interfering with manufacture if there is a company, and I think we have heard from a company that is Ontario-based which has a significant market outside of Ontario. I suppose, to conclude the manufacture area, we do not have control over manufacturing outside of Ontario, so therefore it did not make sense to include that as the leverage. We do have control in terms of sales within Ontario.

The question has been raised about a narrower definition to include exemptions, and I think that was a point brought up by Mr Kanter. I appreciate his offer to consider sitting down and trying to work something out that perhaps addresses this concern. I think it is an important concern in the movement or passage of this bill. I think probably it would make sense to do that prior to trying to proceed with clause by clause, because I think if there is a significant stumbling block, it makes sense to me that we would discuss that and see if we could form a resolution.

The Chair: I think the debate appears to centre around section 2 and I just wonder if we could not adjourn for 15 minutes and have some discussion as to drafting something that might be appropriate.

Mr Farnan: I wonder if I could just add this other point. There has been some discussion in terms of the Criminal Code and different types of guns within the Criminal Code. Mr McGuinty brought up, I think, some very relevant points and we have here the members of the police force who were saying to us that they would be prepared to be involved in giving assistance in the drafting of definitions.

It appears to me that this is probably a good time to ask them what those definitions should be. I do believe there is room for a little bit of

input to the committee and that would be my own feeling at this stage.

The Chair: Mr Kanter, do you have a comment?

Mr Kanter: Yes, on the question of definition, I do have a specific suggestion which Mr Farnan might consider. I do not think we have to hold this thing over for ever, but I would be interested in Mr Farnan's comments on subsection 2(2) and whether that is absolutely integral from his point of view.

As I have suggested, I would be inclined to support a bill that had a prohibition on the sale of gun replicas, but I am very uneasy about this licensing idea and I am wondering if Mr Farnan might comment generally on that concern. My concern would be to amend the definition of gun replica and to continue the prohibition on the sale of gun replicas, but to drop subsection 2(2) and everything that depends on it that relates to certificates and licensing. I am wondering if Mr Farnan might comment on that general approach.

Mr Farnan: Would that prohibition include not only the real gun replica but those guns that could be mistaken for–

Mr Kanter: It would be something like "'gun replica' means any device or object made of plastic, wood, metal or any other material which substantially duplicates or can reasonably be perceived to be an actual firearm, unless it is marked in a very distinctive sort of way."

Mr Farnan: Okay, I could buy into that. Would the fines remain in place, given that definition?

Mr Kanter: Yes, fines for prohibition.

Mr Farnan: Okay, I could plug into that definition.

The Chair: Could I just raise another issue which may have–and then I will ask Mr McClelland to make his comments–but in section 2 the focus is on sale. If, as Mr McGuinty says, this will affect a very small number of people, would it be more enforceable or more sweeping in its application if section 2 were to read, "no person shall sell or purchase," because in this instance the culpable person is a person who is a seller. Certainly, if it is culpable to sell, would it not be culpable to purchase unless it is an appropriate device?

Mr Farnan: I would think, if you were going to go that route, you would want to go the route suggested by the police officers, that possession becomes basically an act that would have a penalty. I do not know where the committee is in terms of looking at that particular area, but if we are looking at this particular bill, I think the sale covers, in terms of, let's say for example, how you monitor the situation.

I do not think you want to wait around until somebody is actually in the act of purchasing something before there is a fine. If the items are on the store shelf and they are for sale, obviously that would be in contravention of the bill. There does not have to be actually a sale going on at the time. You are just offering for purchase. But to say that somebody has to–you would have to fine him as he purchases–I think that would be very untidy.

The Chair: The police suggestion was that it read "no person shall possess," rather than–

Mr Farnan: I would certainly be very comfortable with that personally. I think that is the most effective position we can take as a committee. I would be prepared to move that as an amendment, seeking support for it.

1650

The Chair: We have now gone through the process of having general discussion when we are supposed to be doing clause-by-clause and I think we have had a fairly liberal discussion without looking at any particular amendments. So at this point in time I am going to start again by asking, are there any comments, questions or amendments to this bill, and if so, to which section?

Carman, you had one general comment first, excuse me.

Mr McClelland: I did. I am in your hands. If you want to move ahead, so be it.

My general comments, liberal or otherwise, were simply that I respect the spirit of the bill and what we are trying to do here and I think there are a couple of things that are problematic.

I say that in practical terms the distinction between "toy gun" and "replica" is, I am not going to say insurmountable, but it is a significant matter to deal with in terms of making that distinction, notwithstanding the suggestion made by Mr Farnan in the drafting. I think that is something that has to be very carefully addressed.

It follows through then, and I say this with respect to general comment, that when you get into manufacturers–subsection 3(5), the manufacturer or agent or distributing agent–that has to be more expansive or defined or tied up somehow. Those loose ends have to be addressed. I say that by general comment with respect to possible amendments.

Furthermore, also for our mutual consideration, I want to have some reference to the Criminal Code. Our friends in Ottawa have dealt with this and wrestled with it and they have come up with the word "imitation." "Imitation" is used in the Criminal Code in other sections with respect to the use of an offensive weapon.

I wonder if there can be some help gained from examining the use of the words "imitation" and "replica" in terms of the definition. It may be something that could address the problem.

My final comment is, notwithstanding my respect and belief in the spirit of the bill, I am really torn on this because I come back to what Mr Smith said, that ultimately, at the end of the day, it does not matter what you have in your hands, it is the person who is using it and the way he uses it.

I suspect, and I have not looked at the debates, under section 343(d) of the Criminal Code, in terms of where robbery is defined, when the justice committee in Ottawa looked at that, I am willing to bet a nominal amount that it wrestled very much with that and ultimately came down to the conclusion that it was the use and the method of use of the item. "Imitation" also has been further debated with our colleagues in Ottawa to say that imitation does not even require the victim to be frightened but even reasonably to believe it is an imitation. It is the act that imports the harm to society and to the individual.

My concern is, and I say this with the greatest respect, in a sense I feel like we are tilting at windmills, because when talking about replicas and toys, you have to come to terms with that distinction. Ultimately, at the end of the day, no matter what you do, the question is, how is it used and who is using it, under what circumstances?

I ask very candidly if that is within the purview of our mandate and our responsibilities. I look at it as criminal not only in nature but in its essence. Having said that, I still want to explore and proceed to see if we can get something to deal with the distribution of replicas, but I think we have a lot of loose ends we have to tie up. I say that by way of general comment.

The Chair: Once again, are there any amendments?

Mr Kanter: If we are moving to the amendment stage, I would offer an amendment which is not totally my own but I understand it is used in New York state, or at least a variant of that amendment. Perhaps I had best read it and then it can be distributed, although my copy is a little messy.

" 'Gun replica' means any device or object made of plastic, wood, metal or any other material which substantially duplicates or can reasonably be perceived to be an actual firearm, unless such gun replica (a) is coloured other than black, blue, silver or aluminum; (b) is marked with a nonremovable orange stripe which is at least one inch in width and runs the entire length of the barrel on each side and the front end of the barrel and (c) has a barrel at least one inch in diameter that is closed for a distance of not less than one-half inch from the front end of its barrel with the same material of which the imitation weapon is made. 'Gun replica' does not include any nonfiring replica of an antique firearm, the original of which was designed, manufactured and produced prior to 1898."

The intent of that quite elaborate definition is to exclude any weapon that is perceived to be an actual firearm unless it is marked in a very distinctive manner, and to exclude any nonfiring replica of an antique firearm. I think that part, in essence, speaks for itself. If there is some interest in that amendment, I certainly would be prepared to have it distributed. I do not think it is the kind of thing people would want to vote on without having it in front of them.

The Chair: How would you propose to get it in front of them?

Mr Kanter: I will put that as an amendment and have the clerk distribute it.

The Chair: Is it legible the way it is? Will it photocopy?

Mr Kanter: I think it is legible.

The Chair: Why do we not have it copied and distributed to the members of the committee and we can deal with it.

Mr Kanter: I am just going to strike one thing out. I had "or gun imitation" but I think, frankly, "gun replica" is the term that is generally used, so I would leave it as "gun replica."

Mr D. W. Smith: Does that go into subsection 2(2)?

The Chair: We are dealing right now with section 1, "gun replica" definition.

Mr Farnan: Are we continuing through until six o'clock on clause by clause?

The Chair: I was hoping we could wrap it up by 5:30, quite frankly. We had allocated on the agenda 90 minutes, an hour and a half, and I was planning on keeping it to that.

Mr Farnan: I just have a note from Peter requesting that if there are any votes, I give him a call.

The Chair: Mr Kormos?

Mr Farnan: Yes. He would like to be involved.

The Chair: I would anticipate that some time within the next 30 minutes we will be doing some voting.

Mr Farnan: Can we break for 10 minutes while I go down to the House?

The Chair: Is there agreement on adjourning for 10 minutes, first of all, to obtain copies of the amendment?

Miss Nicholas: I think we should finish the clauses.

The Chair: We are waiting for the photocopies to come back.

Mr Kanter: I think it is quite a good idea, actually, if we could proceed to see if there are any other amendments to sections 2, 3, 4 or 5 and then essentially stack the votes.

The Chair: I would be agreeable to canvassing the members of the committee to see whether, other than in section 1 and the definition of "gun replica," there are any further amendments that members contemplate making.

Mr Kanter: Perhaps I should explain that as part of the amendment I am proposing, we could include firearms as being everything that is covered by the Criminal Code so that gun replicas would be distinguished from firearms. Firearms are those that are covered by the Criminal Code; gun replicas are those that are not. That would be part of the amendment I am circulating.

The Chair: Are there any further amendments to any of the other sections that would flow from your amendment, were it to pass? Are you still proposing to delete subsection 2(2)?

Mr Kanter: Yes, I would propose that and also that all sections that depend on subsection 2(2) be deleted.

The Chair: Have you identified those sections yet?

Mr Kanter: Just very roughly, I believe all of section 3 would be deleted, section 4 would be amended and subsection 4(2) would be deleted. Perhaps legislative counsel could assist us on that score as we come along with the bill.

The Chair: Are there any other proposed amendments?

Mr McGuinty: First of all, I am a little apprehensive about trying to formulate legislation ad hockery on the run, off the top of the head, on the floor. That disturbs me.

Second, what does subsection 2(2) mean? "No person shall sell or offer for sale a toy gun that is not a gun replica...." What the hell? If it is a toy gun, it is not a toy gun replica.

Mr D. W. Smith: That word "not" should not be in there.

Mr McGuinty: Wait now, David. We have discussed this privately. What does it mean? "No person shall sell or offer for sale a toy gun that is not a gun replica." If it is a toy gun it is not a gun replica, because we have made the distinction between replica and toy.

1700

Mr Williams: I am guessing here, because again, I am not the one who drafted the legislation, but I think it means that the green plastic gun that does not really look like a gun or that may be sort of on the borderline to being the gun replica is the thing you have to go and get the certificate for, because there are some objects out there that are borderline. You are not sure whether they are toys or they are the gun replica, and those are the ones that you want to get the certificate for.

Mr McClelland: If I might, Mr McGuinty, in terms of legal drafting I think it is consistent with what the act is saying. The act essentially is saying that you have a group of objects that are either replicas or toy guns. If it is deemed or determined to be a replica, it shall not be sold. Out of that grouping of objects, if it is deemed to be a replica, it is therefore, by the process of elimination, a toy gun, in which case it can only be sold if there is a certificate accompanying the sale. That is not only the intent but what the bill says, as written.

The Chair: Mr McGuinty, are you still very confused by the collective wisdom of all the lawyers in this room?

Mr McGuinty: More so.

Mr D. W. Smith: If that is the case, then you should take "that is not a gun replica" out.

Mr Williams: If it is a replica, it cannot be sold.

Mr D. W. Smith: It should read, "No person shall sell or offer for sale a toy gun unless the minister has issued a certificate." To me, that clarifies it.

Mr Williams: That is exactly–

Interjections.

Mr D. W. Smith: I am with too many lawyers too.

Interjections.

The Chair: Excuse me, can I just sort of put in context where we are in this committee? We had started clause-by-clause and there was an amendment moved by Mr Kanter to the definition of "gun replica" in section 1 and it was suggested that we canvass members as to whether or not they were aware of any other likely amendments that would be moved. We were in the process of doing that. I guess we were doing that concurrently with Mr Farnan's request that he be able to notify Mr Kormos that we might be getting to the point where we would be voting.

That being the case, and the fact that we have the proposed amendment before us, we have had indication of a number of other amendments. Is it still the wish of the committee that we adjourn for 10 minutes so that we can discuss the proposed amendments and Mr Farnan can contact Mr Kormos?

Mr Kanter: It is going to take more than 10 minutes to clear this up.

The Chair: The committee is hereby adjourned for 10 minutes.

The committee recessed at 1705.

1713

The Chair: The committee is again in session. Before we proceed with continuation of Bill 145, I would like the committee members to address the issue of the balance of time for today. We were scheduled to hear from Mr Imai from the Ministry of the Attorney General on court reform, as well as Susan Swift.

I think that we are probably going to use up all of our time on Bill 145. I am told by the clerk, and I concur with his opinion, that we can deal adequately in tomorrow's time with the three people we had scheduled for alternative dispute resolution for today and tomorrow. I think that I would like some direction from the committee as to whether you concur that we will go until six o'clock with Bill 145 to do it appropriate justice, and at the same time we will not have people waiting around for nothing. Is there concurrence in that? Okay, if that is the case, we will commence ADR tomorrow and we will take all of today up with Bill 145.

We have before us an amendment moved by Mr Kanter, but Mr Kanter is not now in the room. Does anybody know where Mr Kanter is?

Interjections.

The Chair: We do have the motion on the floor to amend section 1 by changing the definition of "gun replica." In the absence of Mr Kanter for the time being, are there any other comments on that motion?

Mr Farnan: Yes. In discussing this with Mr Kanter, I think we agreed that this addressed most of the exemptions that we were concerned about. The one that came to my mind that was not perhaps included was theatrical groups. It is fine if the gun in question was an 1850s antique; they would not have a problem. If it was a modern weapon and they required that replica, they might have a problem.

I do not know. I think Mr Kanter sought legal counsel on that. Was there a wording that we came up with?

Mr Williams: Nobody has consulted with me yet. I am not sure just how we would want to deal with that.

Mr Farnan: Okay, but certainly I am supportive of the definition as Mr Kanter has presented it and I will support it.

The Chair: Are there any further comments on Mr Kanter's motion?

Mr McGuinty: In what way is it an improvement on what we have? What does it seek to clarify?

Mr Kanter: It seeks to say that gun replicas should be defined a little more narrowly. The bill seeks to prohibit them and the definition of "gun replica" would exclude things that might be reasonably perceived to be actual firearms but which are marked in a very distinctive sort of way, so that these guns used for paintball and antique firearms would not be prohibited for sale or manufacture.

I would also point out that it is my understanding that this definition is used in New York state legislation which is also designed to prohibit the sale of toy guns or replica guns, so it has been tested, as it were, in another jurisdiction.

Let me also say that I am not absolutely set on every word. Some people have pointed out that the width of the tape might cause them some problems. I am not set on every word. I am trying to find a way to allow those replica guns which do not seem to have caused any harm or have not been used in the commission of any offences. I am trying to find some way of allowing those while excluding the others that Mr Farnan was concerned about.

The Chair: Mr Kanter, for purposes of clarification, you are redefining "gun replica" in section 1. Section 1 has three definitions: "gun replica," "minister" and "toy gun." Do I infer from your definition and your comments on other parts of the bill that you would delete "toy gun" from section 1, the definition section?

Mr Kanter: That is correct.

The Chair: Would you make a motion to that effect?

Mr Kanter: Yes.

Mr Farnan: It would be part of the same motion.

The Chair: Yes, part of the same motion. Will you correct your motion to delete "toy gun" from section 1?

Mr Kanter: Yes. Also, I think the "minister," meaning the Minister of Consumer and Commercial Relations, would be removed by my subsequent amendment to delete subsection 2(2), which refers to the minister. So that should also be deleted, but probably under my second motion.

The Chair: Is it fair to say that you are in effect amending your motion to add to it that the definition of "minister" and "toy gun" are deleted from section 1?

Mr Kanter: That would be correct.

The Chair: I understand that legislative counsel is reworking your definition in point of detail to make it conform to acceptable standards.

1720

Mr Kanter: I have no difficulty.

The Chair: Mr McGuinty, you have a comment?

Mr McGuinty: Again, you see, I am at a considerable disadvantage in that all I can bring to bear upon it is a mind bereft of legal training and limited only to the dictates of common sense. Of what significance is it to state, for example, it must be coloured other than black, blue, silver or aluminum? Clearly the recolouring of the item is an incidental act.

Mr Kanter: If I may answer Mr McGuinty on that score, as I recall, there was some discussion with the police officers, I believe from the police association, who said that yes, there were some lime-green–I think the colour was green–water pistols and they had no problem with lime-green water pistols, so I guess there is a continuum here, but certain objects are so different from working firearms and colour, I think, was one of the things that distinguished them from working firearms. That is why that colour aspect is in here. I guess most real weapons are black, blue, silver or aluminum. You are not speaking to an expert in weapons, I must say.

Mr McGuinty: That is obvious.

Mr Kanter: That may or may not be obvious, Mr McGuinty.

Mr McGuinty: Another question: What is the significance of the "barrel at least one inch in diameter"? Why not an inch and a quarter?

Mr Kanter: I cannot comment on that. Maybe an inch and a quarter is more appropriate.

Mr McGuinty: Would you consider an amendment which would change "1898" to "1895" a friendly amendment?

Mr Kanter: I certainly would. I am not sure about the tone it is offered in, but I certainly would have no difficulty with the idea.

Mr Williams: Whether this is acceptable to the committee I do not know, but one possible way out of the dilemma you all find yourselves in with the dimensions and the colour and all the rest of it is that you could go along with something along the lines of "something other than a device or object that meets the requirements that are prescribed by the regulations" and you could set out all the different things by regulations, but that might not be the sort of thing you want in the legislation.

Interjections.

The Chair: Mr Farnan has a question. Actually, Mr Kormos had his hand up next to speak, but if he wants to defer to Mr Farnan–do you, Mr Kormos?

Mr McGuinty: I was not finished.

The Chair: I apologize, Mr McGuinty. I thought you had completed.

Mr McGuinty: I think the observation made by our colleague the legal counsel is eminently sensible. I think that to try to define in an act in such explicit terms as we have here is inadvisable and I think this type of thing, because it could be expanded upon or clarified or added to any number of ways as a regulation for point of reference–to my mind, an act should be definitive and to define means to exclude and it is somehow precise and clear. I find that this does not comply.

With great reluctance, I will defer to your legal judgement.

Mr Farnan: I am supporting the amendment on the basis that I think it is necessary to meet an accommodation. I really think that the initial definition is broad enough when one applies common sense to it. I do hear over and over again the police officers saying, "If the colour and the shape can be mistaken for a real firearm," and I think the thing that satisfies me about Mr Kanter's definition is that he speaks to the colour and shape of the replicas. However, once you take Mr McGuinty's criteria of common sense, I

think all of that is contained in the original definition that "'gun replica' means a toy gun or other object that is not a firearm as defined in the Criminal Code (Canada) but that closely resembles and might reasonably be mistaken for such a firearm." Whether or not it would just be sufficient to add the phrases with relation to colour and shape that the police officers suggested to us I do not know, but I am prepared to support the amendment.

The Chair: Do we have the final wording for an amendment? I would like Mr Kanter to read the final wording to his amendment and then I would like to put it to a vote.

Mr Williams: If he can read my scribble.

Mr Kanter: The legislative counsel apparently has something that is in better form. Would it be possible to have the legislative counsel read it and for me to adopt it? I think he is just attempting to improve it.

The Chair: Yes. I think the chair is looking for a specific wording of the amendment, and hopefully it will include the deletion of the items that have to be deleted in the existing section 1.

Mr Kanter: If the counsel could read it, then I will likely adopt it.

Mr Williams: I will just explain two things that I have done. I have eliminated the references to the different types of material that the object is made out of and referred to it as "any material." I have taken out the words "antique firearm" and just used "firearm," since anything prior to 1898 would be an antique in any event.

Mr Kanter: Do not look at my eyebrows; just read it.

Mr Williams: I will put it back in if you want.

Mr Kanter: No, no, just read it.

Mr Williams: Okay, "I move that the definitions of 'gun replica' and 'toy gun' as set out in section 1 of the bill be struck out and the following substituted therefor:

"'Gun replica' means any device or object made of any material which substantially duplicates or can be reasonably perceived to be an actual firearm, as defined in the Criminal Code of Canada, unless the device or object (a) is coloured other than black, blue, silver or aluminum"–I will not read all the (a), (b) and (c), and then you get down to "gun replica" and it should read, "does not include any nonfiring replica of a firearm, the original of which was designed, manufactured or produced prior to 1898."

Mr Kanter: I would adopt that with my amendments.

The Chair: Mr McGuinty, you have a comment?

Mr McGuinty: Just as a point of curiosity, what role in clarifying the sense intended here does "designed and manufactured" play? What significance do those words have? Could it be designed and manufactured after 1898 but produced before? They are clearly redundant.

Mr Williams: You could probably live with the word "manufactured." Strike out "designed and produced" and I think you end up with the same results.

The Chair: Thank you, Professor McGuinty.

Mr McGuinty: Is "designed" deleted also?

Mr Williams: You do not care if it is designed. If it has never been built, it does not make any difference, so I think the word "manufactured" would suffice.

The Chair: Just a point of clarification: You did not address that amendment to the definition of the word "minister."

Mr Kanter: That really follows more logically with subsection 2(2). You might deal with it then.

The Chair: What we are doing is amending section 1, and I think that if we can encompass all the amendments for section 1, we should do it.

Mr Williams: If I can make a suggestion, you do not really need an amendment to it. All you do is just not move subsection 2(2) and all the rest of the sections that pertain. The only one that we need a motion to amend would be clause 4(1)(a).

The Chair: I am thinking in terms of the definition section. Section 1 defines "minister." Do we leave the word "minister" in section 1 or not?

Mr Kanter: I move that it be struck out.

The Chair: As part of your amendment?

Mr Kanter: As part of my amendment, yes, so I would like the amendment to read I move that section out.

The Chair: Okay, so how does that read now?

Mr Williams: "I move that the definitions of 'gun replica', 'minister' and 'toy gun' as set out in section 1 of the bill be struck out and the following substituted therefor."

1730

Mr Kanter: Okay. That is fine.

The Chair: All those in favour of Mr Kanter's motion?

Interjections.

The Chair: Mr McClelland, are you going to participate in this vote?

Mr McClelland: Sure. I am not at the table, but I am happy to oblige.

The Chair: All those opposed?

Motion agreed to.

Section 1, as amended, agreed to.

The Chair: Are there any further amendments or comments to any other section of the bill?

Section 2:

Mr Kanter: I move that subsection 2(2) be struck out and that any other parts of the bill that rely on or relate to subsection 2(2) also be struck out.

The Chair: Mr Kanter, I think we are going to have to–

Mr Kanter: There may be a more eloquent way of doing that.

The Chair: Yes. I think what we will have to do is deal with it clause by clause, and if in fact the committee moves to delete subsection 2(2), then we will proceed with any appropriate amendments to the other sections as we go.

Mr Kanter: That is satisfactory.

The Chair: So how will your amendment read then, Mr Kanter?

Mr Kanter: That subsection 2(2) of the bill be struck out.

The Chair: Shall subsection 2(1) of the bill stand as part of the bill? All those in favour? Agreed.

We now have a motion to delete subsection 2(2).

All those in favour of Mr Kanter's motion to delete subsection 2?

All those opposed?

Motion agreed to.

Section 2, as amended, agreed to.

Section 3:

The Chair: Are there any comments, questions or amendments to section 3?

Mr Kanter: Now that we have removed subsection 2(2), which relates to certificates issued by the minister, I believe the entire section should be deleted.

The Chair: Are you making a motion to delete section 3?

Mr Kanter: I so move.

The Chair: Is there any discussion on Mr Kanter's motion to delete section 3 of the bill?

Mr Farnan: May I just take a moment to read through it before we vote?

The Chair: Mr Farnan wants a moment to read through.

Mr Farnan: Basically, the intent then is that there is no authority to whom a vendor can appeal as to whether or not he would be liable to a fine. The vendor has to use his common sense, based on the definition as provided within the bill. Is that correct?

Mr Kanter: I think that would be determined at the trial, a criminal or quasi-criminal trial.

Mr Farnan: Okay, so we can delete section 3.

The Chair: All those in favour of deleting all of section 3 from the bill?

Opposed?

Motion agreed to.

Section 4:

The Chair: Are there any comments, questions or amendments to section 4 of the bill?

Mr Kanter moves that section 4 be struck out and the following substituted therefor:

"(4) Every person is guilty of an offence if the person contravenes section 2."

Are there any comments or questions on Mr Kanter's amendment on section 4?

Mr McGuinty: What does subsection 4(2) mean, "if when the person sold a toy gun or offered a toy gun for sale the person reasonably believed that the minister had issued a certificate of approval"?

The Chair: I believe, Mr McGuinty, that is not now relevant because the issue of a toy gun is not involved in the act any more.

Mr McGuinty: All right. It is as irrelevant now as it was in the prior context.

The Chair: Thank you, Mr McGuinty. Mr Kanter, would you state your amendment again? Then we will ask for a vote.

Mr Kanter: Yes. Section 4 would read, "4. Every person is guilty of an offence if the person contravenes section 2."

The Chair: Is everyone in favour of Mr Kanter's motion to amend section 4? Can we have a vote, please?

All those in favour?

All those opposed?

Motion agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7, inclusive, agreed to.

Title agreed to.

The Chair: At this point we have the option to report Bill 145 to the House as amended or not to report it to the House. Is there a motion?

Mr McGuinty moves that it be reported to the House as amended.

Is there any comment or discussion or question on Mr McGuinty's motion to report Bill 145, as amended, to the House?

Mr McGuinty: We have been dealing with a very elusive issue here and an area that is very, very difficult to define, but out of all the legal terminology we have wrestled with–and I respect the need to refine it in the way that Ron Kanter and others have–out of all of that emerges one fact with abundant clarity: those who are involved in the enforcement of law assure us that this is a problem. The action we are taking with this bill is one small step in the direction of alleviating that problem.

It is quite easy to sit here in a kind of cavalier and facetious way and pinpoint the difficulties. You can visualize whether requiring a permit means constables are going to start patrolling Romper Room to see if the little mutt with a piece on his hip has a certificate.

Mr Kanter: We took out that part.

Mr McGuinty: There are all kinds of implications one might imagine. Yes, we have taken that out.

Mr Kanter: Yes.

Mr McGuinty: Romper Room will be exempt from patrol. But the fact is that for those involved in law enforcement it does not solve the problem. There is no no quick-fix solution to the issue we are dealing with here, but this does take a step in that direction. I think if it is viewed accordingly, it has merit.

The Chair: Thank you, Mr McGuinty. There is a motion on the floor to report Bill 145 to the House as amended. Are there any further comments?

All those in favour of the motion?

All those opposed?

1740

Bill, as amended, ordered to be reported.

The Chair: I do want to compliment the committee for its tenor of co-operation in resolving this complicated bill, complicated in terms of definition. I want to take this opportunity to congratulate Mr Farnan for having brought the bill to this point and having successfully gotten committee approval.

Mr Farnan: Mr Chairman, if I could also thank all the members of the committee, because I think accommodations have to be made, Mr Kanter showed definite leadership in bringing accommodations–

Mr Kanter: If we could only go back and revisit Sunday shopping.

Mr Farnan: Yes, if only you could have been as accommodating on Sunday shopping, but certainly I think you played a key role in this and I appreciate it.

The Chair: In the spirit of co-operation, before we adjourn, I want to bring to the attention of the members of the committee, if you have not already seen it, the Background Paper on Alternate Dispute Resolution in Canada, prepared by researcher Susan Swift. It is an excellent document. It is a very good overview. She is going to be presenting it tomorrow and I would hope that each and every member of the committee would review it, read it and be prepared to ask questions on it tomorrow because I think it is going to set the tone for the alternate dispute resolution that we are going to embark on in this committee over the next couple of months.

The clerk also has available for distribution Alternate Dispute Resolution: An Overview, prepared by the Canadian Bar Association. They had a task force report on that particular issue. Again, I would urge the members of the committee to read it before we embark upon this particular matter in committee starting tomorrow.

Is there unanimous consent to adjourn?

Miss Nicholas: No.

The Chair: No? Excuse me. Miss Nicholas.

Miss Nicholas: Sorry. I have a question. Maybe I missed it, but what are we doing over the break? Have we had a committee schedule submitted and has it been accepted? We spoke about your visit to the Board of Internal Economy. I am afraid I do not know what the result of that was.

The Chair: Excuse me. I was planning on discussing that tomorrow, but we can discuss it just as easily today.

Miss Nicholas: Could we? Only because I would like to know for my own planning tonight.

The Chair: Certainly.

Miss Nicholas: I have till 12 midnight to think about these types of things and it would help.

The Chair: The chairman of the committee and the clerk met several weeks ago and presented to the committee a proposal for a budget of $9,000 to cover the cost of fees and travel and accommodation for witnesses from various jurisdictions to come here to Queen's Park.

The committee decided to make a recommendation to the Board of Internal Economy to travel to British Columbia and/or California. We received notification this morning from the Board of Internal Economy that it has denied our request for travel but has approved the original concept of a budget of $9,000 to bring the witnesses to us. So unfortunately or fortunately, depending on your perspective, there is no travel planned over the break for this particular committee.

Mr McGuinty: Did they give us the option of sending a delegate?

The Chair: I do not think we had five days of sitting to decide who that would be. That is basically where we are with that.

The other thing is, in terms of the suggested times that we sit, it was suggested to the Board of Internal Economy that we sit for three weeks in February and that we have January and March completely free. Apparently it has given approval in principle to sitting three weeks in February.

Miss Nicholas: Would that be primarily to deal with alternative dispute resolution, or do we foresee any other bills coming to this committee?

The Chair: At this point in time, those three weeks are allocated for alternative dispute resolution. We have no knowledge of any other bills being referred to us by the Legislature at this point.

If there are no further questions, we will adjourn for today until 3:30 pm tomorrow.

The committee adjourned at 1746.

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Kanter, Ron (St. Andrew-St. Patrick L)
Kormos, Peter (Welland-Thorold NDP)
McClelland, Carman (Brampton North L)
McGuinty, Dalton J. (Ottawa South L)
Nicholas, Cindy (Scarborough Centre L)
Runciman, Robert W. (Leeds-Grenville PC)
Smith, David W. (Lambton L)
Sterling, Norman W. (Carleton PC)

Clerk: Arnott, Douglas

Staff:
Williams, Frank N., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 19 December 1989

The committee met at 1603 in room 228.

ORGANIZATION

The Chair: I would like to begin this meeting of the standing committee on administration of justice. There are a couple of house-cleaning things before we proceed.

First of all, we have received the resignation of the vice-chair. Mr Kanter, I understand you have a nomination.

Mr Kanter: Yes. I would like to nominate Carman McClelland as vice-chairman of this committee.

The Chair: Are there any other nominations?

Mr Sterling: I move nominations be closed.

The Chair: If there are no other nominations, I declare nominations closed and Mr McClelland to be the vice-chair of the standing committee on administration of justice.

Miss Nicholas: I hope he does as good a job as Mr Polsinelli.

Mr Kanter: I hope he does a better job.

The Chair: I was not going to do it, but I am debating whether I should put the resignation into the record verbatim. Do I have your permission, Mr Polsinelli?

Mr Polsinelli: It is part of the public record.

Miss Nicholas: We want to hear it.

The Chair: "Dear Sir: I quit."

We do have an important matter to discuss, and that has to do with the three weeks we are scheduled to sit in February. We do have to order our business for those three weeks. We have to set a schedule of witnesses and any other business we may want to come before the committee at that time. In view of the fact that the House is not sitting and we will not be meeting as a committee until then, I wonder if it is appropriate for someone to make a motion that the subcommittee on committee business be delegated the authority to order the committee's business for those three weeks.

Mr Polsinelli: I so move.

The Chair: The motion is made.

Motion agreed to.

The Chair: The next order of business is today's agenda. There was some discussion before we convened today that perhaps we would have an abbreviated session today, given the fact that there are 13 or 14 bills in the House today for third reading and some of us are going to be involved in that process. Is there any comment from any of the committee members as to whether we should simply proceed with our full agenda for today or deal with an abbreviated agenda in some fashion?

Mr Sterling: I had the opportunity before we met to talk to Shin Imai, Michael Cochrane and Professor Emond and I think it was agreed by everyone that it would be better if we had the full committee, or nearly the full committee, before we heard their presentations, particularly in the case of Professor Emond because he wanted a question-and-answer kind of exchange to take place. I do not think it would be fruitful to go ahead this afternoon. I understand Mr Cochrane will not be here in February. However, I think that this afternoon it would be fruitless for us to go ahead. I would just like to apologize on behalf of my party and, I think, the other members of the committee. We perhaps erred in trying to hold this so close to the end of the session.

Mr Kanter: I basically concur with the comments of Mr Sterling. I think it is regrettable that someone came down. On the other hand, I think it would make more sense, in terms of having his view not just heard but considered carefully in the context of other discussions on this subject, to defer the matter until our sittings in February. So I concur with Mr Sterling.

The Chair: Is there any other comment?

Mr Sterling: I move that we adjourn.

The Chair: Before we deal with that issue, Mr Sterling, there was the thought that perhaps the committee research officer, Susan Swift, might give an overview of her research paper and file that officially for the record.

Mr Polsinelli: Why does she not just table it with the committee?

The Chair: That is a possibility as well.

Mr Polsinelli: Perhaps it would give the committee members an opportunity to review it for the next session. We would be able to offer some constructive comments.

The Chair: Is there agreement to table Ms Swift's research paper with the committee?

Agreed.

The committee adjourned at 1607.

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Clerk: Arnott, Douglas

Staff:
Swift, Susan, Research Officer, Legislative Research Service